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MAR 25 1997

SPECIAL PLACES 2000:

ANALYSIS OF CURRENT LEGISLATION

Prepared By

Environmental Law Centre

For

Alberta Environmental Protection

January, 1996

ENVIRONMENTAL LAW CENTRE

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I. INTRODUCTION

A *Background To This Report*

The release of the government's policy document, *Special Places 2000: Alberta's Natural Heritage, Policy and Implementation Plan* last spring has clearly provided a mandate for reviewing and rethinking past and present approaches to the designation of land within the Province. It would be reasonable to assume that part of that process will be to review existing legislation to ensure its adequacy to achieve implementation of government policy, as it relates to Special Places. Such a review affords an excellent opportunity to revise legislation so that it transcends mere adequacy and moves towards effective and efficient implementation in a way that satisfies other government policies such as public involvement and sustainability. If that could be accomplished Alberta would provide much needed leadership in the area of modern land conservation and protection legislation. As always, a good way to begin the process of legislative reform is through a clear understanding of the strengths and weaknesses of existing legislation in Alberta, and elsewhere.

The Environmental Law Centre was retained by Alberta Environmental Protection to undertake a review of designated lands legislation to: (a) provide a description of such legislation as it now exists in Alberta, (b) identify and describe the sorts of land dispositions now permitted in designated areas, (c) provide an overview of land designation legislation in effect in other jurisdictions and (d) make recommendations regarding the consolidation and revision of Alberta's land designation legislation. The context for this review has been the Special Places program, as recently described by the Alberta government.

There are five parts to this paper. Part I, being the *Introduction*, provides an overview of the Special Places program to set the stage for the discussion and recommendations which follow.

Part II consists of a comprehensive review of existing Alberta legislation and policy providing for the designation of land, having regarding to a number of factors including:

- authority for designation,
- administration,
- purpose of designation,
- designation process,
- permitted and prohibited uses,
- public involvement,
- management plans,
- enforcement, and
- extent of designation.

In addition to describing individual instruments according to these criteria, inconsistencies between the various acts and regulations will be identified as will any "gaps" that become apparent from a consideration of the legislative framework as a whole.

Part III provides an alphabetical inventory of the types of dispositions that may be granted against public land. This Part is vital to Special Places since legislation establishes the perimeters of Crown dispositions which affect or may affect land candidate for Special Places designation. This is because legislation speaks to holder's rights and limitations on those rights. It addresses how government retains certain power and authority. It can shed light on to what extent a disposition may be consistent with a Special Places designation. Legislation sometimes deals with

government's power to alter or cancel dispositions and indicates whether and when the relevant Minister should consider government paying compensation.

Part IV provides an overview of land designation regimes and legislation of other jurisdictions including other Canadian provinces and New Zealand as a means of identifying models for both the structure and the content of modern land designation legislation.

The paper concludes with discussion, conclusions and recommendations as provided in Part V. The recommendations are not intended to resolve all outstanding issues nor to conclude the process of legislative reform; instead, we hope to provide some guidance as to the issues and options which ought to be the focus of that process.

B Alberta's Special Places Program

To some extent, Alberta's Special Places program is a response to a broader campaign initiated by a number of conservation organizations to achieve the goal of protecting 12% of the land base by the year 2000. A brief description of that campaign is given here to provide a context within which to understand and explore the Special Places program.

In 1987, the World Commission On Environment and Development noted that 4% of the planet's land area was managed explicitly to conserve species and ecosystems.¹ Based upon anticipated growth in human population many conservation groups have recommended that, to keep pace with population, 12% of the land base will need to be set aside by the year 2000, in order to maintain the

status quo. The Canadian Wilderness Charter provides:²

1. That governments, industries, environmental groups and individual Canadians commit themselves to a national effort to establish at least one representative protected area in each of the natural regions of Canada by the year 2000,
2. That the total area thereby protected comprise at least 12 per cent of the lands and waters of Canada as recommended in the World Commission on Environment and Development's report *Our Common Future*...

By "protection" both the authors of the Bruntland Report and the signatories to the Canadian Wilderness Charter seem to have in mind land preserved in a natural or wilderness state, free from most uses, in particular logging, mining and hunting.³

The "12% by 2000" blueprint put forward by the World Wildlife Fund as described by Monty Hummel is relatively straight forward:

- 1990: park systems plans are established in every Canadian jurisdiction,
- 1995: the park systems plans are 75% completed in every Canadian jurisdiction, and
- 2000: the park systems plans are 100% completed in every Canadian jurisdiction and the target of 12% has been met.

Alberta has not formally committed to either the vision or blueprint for "12% by 2000", although the Special Places program may be consistent with those concepts.

The process leading up to the Special Places program began in 1992 with the release of a draft policy document entitled *Special Places 2000: Alberta's Natural Heritage*. At the same time, the government announced the formation of a multi-sectoral committee, the Public Advisory Committee on Special Places 2000, which

began its work in April, 1993. The mandate of the Committee was to seek public opinion regarding the draft policy document and to make recommendations to the government. The Committee fulfilled the first part of its mandate by soliciting and reviewing 500 written responses; holding six open houses in various communities and by conducting focus group interviews.⁴ The second part of the Committee's mandate was satisfied by the submission of a report to the government on November 15, 1993.⁵

The end result of this consultative process is the Special Places program as established and described by the policy document *Special Places 2000: Alberta's Natural Heritage, Policy and Implementation Plan* which was released in March, 1995. As stated in the Policy and Implementation Plan:⁶

Special Places 2000 focuses on providing the policy, the science and the process by which [gaps in the land designation system] will be identified and filled - thereby completing a system that includes the environmental diversity of the province's six Natural Regions by the end of 1998.

Completing the system of protected areas may be the desired outcome of Special Places 2000 but it is clear that site selection and management will be influenced by three other goals of the program which are: (a) outdoor recreation, (b) heritage appreciation and (c) tourism/economic development.⁷

Establishment of a Special Places site is to occur through a six step process engaged by the nomination of a site by "any Albertan".⁸ In steps two, three and four the nomination is reviewed by various committees who will consider both policy objectives and scientific information relevant to the nominated site and management principles developed for the site. Ministerial and Cabinet review occurs in step five. If not discontinued in the progress from steps two through five, the final step is the establishment of the site which will then be managed in accordance with its approved management principles.

In addition to the goals discussed above, the Policy and Implementation Plan sets out a number of "guiding principles" which include the following:⁹

- The Government is committed to ensuring that there is consultation among government departments, agencies, stakeholders and local citizens.
- All factors including ecological, social, cultural and economic will be included in the site selection, recommendation and decision making process using an integrated and balanced approach.
- A wide spectrum of designations using both legislative and policy mechanisms would be available under the Special Places 2000 initiative in order to designate and manage sites.
- Consultation with key stakeholders will be used to determine the details of the site selection and nomination process. ... Representation from the public, including all interests, is necessary in the site selection and management process. The Government is committed to balanced and fair representation from all stakeholders and the public in the implementation of this initiative. ...
- The Government will provide professional and technical support as required in the identification, assessment and implementation process.
- Special Places 2000 will help provide a context for the preservation components arising from the Forest Conservation Strategy, the Wetlands Policy, the Heritage Rivers Program and related initiatives. ...
- The government will honour all commitments to tenure holders, utilizing the existing renewal processes. When potential sites are being identified, reviewed and possibly designated, the impacts on tenure holders will be addressed through the management planning process.
- Efforts will be made with other provincial jurisdictions to promote a coordinated approach.

This then, is the Special Places 2000 program against which to consider existing designated lands legislation in Alberta. Before turning to that review in the next part, it may be useful to keep in mind the following questions:

1. Is provincial legislation in force in Alberta a sufficient legislative base for the goals and objectives of the Special Places 2000 program?
2. If not, what legislative reform should be undertaken to provide a sufficient legislative base?
3. Even if the existing legislative base is sufficient to support the goals of the Special Places 2000 program, is there a better, more effective or efficient way that is achievable through legislative reform? In particular, are there inconsistencies or overlaps that should be addressed?
4. Aside from the Special Places 2000 program, are there other reasons that warrant legislative review and amendment at this time?

ENDNOTES

1. The World Commission on Environment and Development, *Our Common Future* (Oxford, New York: Oxford University Press, 1987) at 147.
2. *Endangered Spaces, The Future For Canada's Wilderness*, Monty Hummel, editor (Toronto, Ontario: Key-Porter Books Limited, 1989) at 275.
3. Monty Hummel, "The Upshot" *Endangered Spaces*, *ibid.* at 267.
4. The Advisory Committee on Special Places 2000, *Special Places 2000: Alberta's Natural Heritage*, November 15, 1993.
5. *Ibid.*
6. *Supra*, note 4 at 3.
7. *Supra*, note 4. The fourth objective is preservation. The objectives of the Special Places 2000 program vary slightly but perhaps significantly from those articulated by the Government in 1992. Specifically, the 1992 objectives of protection and tourism appear as preservation and tourism/economic development in 1995.
8. *Supra* note 4 at 9-10.
9. *Supra*, note 4 at 7-8.

II. EXISTING LEGISLATION

A *Introduction*

This part contains a review of the various legal mechanisms found in existing Alberta laws which could be used to designate land consistent with the purposes of Special Places 2000. Each legal mechanism is classified and reviewed using the following categories:

1. **authority for designation** - what Alberta Act or regulation authorizes a public body or official to effect a designation?
2. **administration** - which Minister of government, Department and officials have administrative responsibility?
3. **purpose of the designation** - what is the legal purpose or objective?
4. **designation process** - what legal process must be followed to set up the designated area?
5. **permitted and prohibited uses** - what specific activities are permitted or prohibited?
6. **public involvement** - is there any formal process for learning the views of members of the public on the establishment or management of the designated area?
7. **management plans** - is there a process for developing management plans and have any such plans been finalized?

8. **enforcement** - are there any offenses created respecting the designated area?
9. **extent of designation** - how many of this type of area have been designated?

The adequacy of these instruments and any gaps will be identified and analyzed at the end of this part of the study.

B *Wilderness Areas*

1. Wilderness Areas - Authority for Designation

Wilderness areas are authorized by Alberta's *Wilderness Areas, Ecological Reserves and Natural Areas Act*.¹ This Act also provides for the designation of ecological reserves and natural areas, which are reviewed later in this part.

The Act also authorizes Cabinet to pass regulations establishing any area of land adjacent to a wilderness area as a controlled buffer zone (s.12(2)).

2. Wilderness Areas - Administration

Wilderness areas are the responsibility of the Department of Environmental Protection.

3. Wilderness Areas - Purpose of the Designation

The *Wilderness Areas, Ecological Reserves and Natural Areas Act* does not expressly set out the purpose of wilderness areas. Accordingly, the purpose of

wilderness areas must be derived from a reading of the provisions in the Act. The Preamble² to the Act is important. It reads:

WHEREAS the continuing expansion of industrial development and settlement in Alberta will leave progressively fewer areas in their natural state; and

WHEREAS it is in the public interest that certain areas of Alberta be protected and managed for the purposes of preserving their natural beauty and safeguarding them from impairment and industrial development; and

WHEREAS to carry out these purposes for the benefit and enjoyment of present and future generations it is desirable to establish certain kinds of areas and reserves and to provide varying degrees of protection to those areas and reserves.

In addition, those parts of the Act which prohibit certain activities in a wilderness area also help to define the purpose of wilderness areas. Those provisions are listed below in "permitted and prohibited uses".

4. Wilderness Areas - Designation Process

Wilderness areas created under this Act are listed in the Schedule to the Act. The Schedule contains the complete legal description for each wilderness area.

A schedule to an act is a part of the act to which it is appended, but it does not necessarily follow that the schedule forms a part of the law. This must be determined through a review of the relevant provisions in the statute relating to the schedule³.

In this case, s. 3 of the *Wilderness Areas, Ecological Reserves and Natural Areas Act* says that "the areas of land described in the Schedule to this Act are established as wilderness areas". The provision does not expressly state that the terms of the schedule have the force of law. However, the use of the words are

established in the section in reference to wilderness areas listed in the Schedule, strongly suggests that the schedules do constitute the legal designation of wilderness areas. Accordingly, an act of the Legislature is required to add to, amend or delete all or any part of the schedules.

5. Wilderness Areas - Permitted and Prohibited Uses

Regarding activities permitted in a wilderness area, the Act authorizes the Minister (in s.5) to set up programs to:

- manage and preserve the animal and plant life and environment of the wilderness area
- do environmental research that does not involve physical disturbance to the wilderness area
- further public education and interpretation
- generally, preserve and protect the wilderness area

The Act makes provision, in s. 6, for dealing with existing interests in Crown land that is either included in a new wilderness area or added to a wilderness area. Specifically, the Act requires that the relevant Minister "as far as is practicable" withdraw, cancel or terminate the following interests: a disposition under the *Public Lands Act* and regulations, a lease, permit, easement or other disposition under the *Special Areas Act* and regulations, a surface disposition under any other act, and a disposition as defined in the *Mines and Minerals Act*. The Act also prohibits the government from disposing of any of the interests listed above in a wilderness area (s.7(1)) granting any form or permission that would enable someone to expropriate or acquire any interest in a wilderness area (s.7(2)). The province and its agencies are prohibited from doing the following in a wilderness area except in certain emergency situations or where it is a part of a ministerial program authorized under s. 5:

constructing, maintaining, repairing or operating any public work, road, railway, aircraft landing strip, helicopter base, structure or installation (s.7(3)).

Except in specified emergency situations, these activities are prohibited in a wilderness area (s.8):

- travelling, except on foot
- hunting or trapping animals
- fishing
- depositing of litter, etc. except in places provided
- unless authorized by the Minister, destroying, excavating or removing specified objects of geological, ethnological, historical or scientific interest
- using a horse, pack animal or motorized vehicle
- introducing any material that may be plant or animal life in the wilderness area
- without Ministerial consent, building or adding onto any improvement or doing any act that will change the surface of the land in the wilderness area

In addition, the Minister is authorized under s. 11 of the Act to impose travel restrictions in a specific period in a wilderness area either absolutely or under authority of a permit.

In a controlled buffer zone, various administrative bodies are prevented from authorizing strip mining and quarrying as well as diversions, undertakings or works under the *Water Resources Act*.

6. Wilderness Areas - Public Involvement

The Act establishes the Advisory Committee on Wilderness Areas and Ecological Reserves, a body consisting of 12 members, 6 from government and 6 from outside of government. The Advisory Committee is assigned the responsibility of receiving and considering requests from the public regarding wilderness areas and making recommendations to the Minister on the establishment of new wilderness areas, the addition of or withdrawal of land from wilderness areas and the making of regulations for the administration, management, operation and utilization of wilderness areas (s.2(7)). The Minister is obligated to refer any recommendations from the Advisory Committee to Cabinet for its consideration (s.2(8)).

All Advisory Committee recommendations must be filed with the Legislature, and accordingly, are public. The last Advisory Committee report filed, its tenth annual report, accounted for its activities for the period April 1, 1992 to March 31, 1993.

7. Wilderness Areas - Management Plans

There is a management plan for each of the three wilderness areas designated under the Act. They were approved in October, 1992, and they set out the Department's objectives for protection, heritage appreciation, outdoor recreation and tourism. There are also guidelines for the long-term protection, management and use of the wilderness areas.⁴

The management plan for the White Goat and Siffleur Wilderness Areas states that the purpose of preparing a plan is to ensure that each wilderness area achieves its stated purpose. Specifically, the plan is to:

- identify the Areas' role in the Ministry's conservation outdoor recreation system

- identify its goal and management objectives
- establish guidelines for long term protection, management and use
- identify implementation strategies for achieving the Areas' goal and management objectives⁵

The management plan in this instance zones the wilderness areas as "preservation zone", thereby permitting only the following activities: no trace camping; foot travel; climbing; research related to wilderness resources, and recreation impacts; resource inventories and monitoring; and rehabilitation of disturbed sites.⁶

8. Wilderness Areas - Enforcement

The following are offenses under the Act:

- undertaking any of the prohibited activities listed in s. 8(1) (s.8(2))
- destroying, damaging or polluting any land, water, plant life or animal life in a wilderness area, unless it is permitted by the Minister under ss 8(1)(f),(k) of the Act
- contravening an order of the Minister limiting travel in a wilderness area (s.11(2))
- doing strip mining or quarrying in a controlled buffer zone or undertaking any diversion undertaking or works (authorized under the *Water Resources Act*) in a controlled buffer zone (s.12(5))

Penalties prescribed for offenses under the Act are:

- for the first offence, a fine not less than \$50 and not more than \$1,000

and in default, imprisonment for not more than 60 days

- for a second offence, a fine of not less than \$100 and not more than \$5,000 and in default, imprisonment for not more than 120 days
- for a third and subsequent offenses, for a natural person, imprisonment for not less than one month and not more than 6 months, and for a corporation, a fine of not less than \$10,000 and not more than \$50,000 (s.13)

The Act can be enforced by any one of the following: a member of the RCMP, a wildlife officer appointed under the *Wildlife Act*, a forest officer appointed under the *Forests Act* and a park ranger appointed under the *Provincial Parks Act*.

9. Wilderness Areas - Extent of Designation

There are three wilderness areas in Alberta designated under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, the Ghost River Wilderness Area, Siffleur Wilderness Areas and White Goat Wilderness Area. No controlled buffer zones have been established for wilderness areas.

C Ecological Reserves

1. Ecological Reserves - Authority for Designation

Ecological reserves are created under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. As with wilderness areas, the Act authorizes Cabinet to pass regulations establishing any area of land adjacent to an ecological reserve as a controlled buffer zone.

Many provisions in the Act apply to both wilderness areas and ecological

reserves; where this is the case, this fact will be indicated rather than repeating the provision.

2. Ecological Reserves - Administration

Ecological reserves are the responsibility of the Department of Environmental Protection. Some ecological reserves are administered by the Natural Resources Service and the Land and Forest Service of the Department of Environmental Protection and others are administered by Agriculture, Food and Rural Development, and one by the Special Areas Board.

3. Ecological Reserves - Purpose of the Designation

The Preamble to the Act which is set out in section B3 above in relation to wilderness areas, also applies to ecological reserves. However, there is a specific section in the Act which sets out the specific characteristics of ecological reserves. S. 3.1(1) of the Act states that an area of public land can be designated as an ecological reserve if one or more of the following conditions are met respecting the land:

- is suitable for scientific research associated with the studies of natural ecosystems
- is a representative example of a natural ecosystem in Alberta
- serves as an example of an ecosystem that has been modified by man and offers an opportunity to study the recovery of the ecosystem from that modification
- contains rare or endangered native plants or animals that should be preserved
- contains unique or rare examples of natural biological or physical features

The Department characterizes the role of ecological reserves as: "areas selected as representative or special natural landscapes and features of the province, which are protected as examples of functioning ecosystems, as gene pools for research, and for education and heritage appreciation purposes".⁷

4. Ecological Reserves - Designation Process

Unlike wilderness areas which require the agreement of the Legislature for their designation, ecological reserves can be designated by a Cabinet regulation. Indeed, there is one separate regulation for each designated ecological reserve, containing the name and legal description of the ecological reserve.

Generally speaking, it is a less complex and time-consuming process to pass a Cabinet regulation than it is to have an amendment to an Act passed in the Legislature. Accordingly, although it is easier to designate an ecological reserve than a wilderness area, it is also easier to alter or revoke the designation.

5. Ecological Reserves - Permitted and Prohibited Uses

There are many similarities between permitted and prohibited uses of wilderness areas and ecological reserves. The Minister is authorized, in s. 5 of the Act to establish the same types of programs in ecological reserves as in wilderness areas. (see section B5 above).

As with wilderness areas, the Act deals with the issue of existing interests in Crown land that are either included in a new ecological reserve or added to an ecological reserve. For ecological reserves, the relevant Minister is required to, "as far as is practical" withdraw, cancel or terminate interests set out in s. 6. The difference from wilderness areas, is that in a new or expanded ecological reserve, the Minister of Energy is not required to terminate an interest in a petroleum or natural gas

disposition (s. 6(2)). Also, the Minister of Environmental Protection is given an additional option with respect to new or expanded ecological reserves, not available for wilderness areas. The Minister may permit specified existing interests to continue until their expiry and to be renewed. Those interests are:

- dispositions under the *Public Lands Act* or *Special Areas Act* and regulations in connection with a petroleum and natural gas disposition under the *Mines and Minerals Act*
- other dispositions under the *Public Lands Act* and *Special Areas Act* and regulations
- timber licenses and permits under the *Forests Act*
- permits to graze livestock under the *Forest Reserves Act* and regulations

Prohibited activities in ecological reserves set out in s. 8 of the Act are the same as those for wilderness areas, with these exceptions:

- the limitation in wilderness areas to travel by foot does not apply in ecological reserves
- the prohibition against travelling in a wilderness area by horse, pack animal or motorized vehicle does not apply to ecological reserves; however, in ecological reserves, travel by motorized vehicle or boat is limited to areas designated for that purpose under the regulations
- lighting or maintaining an open fire in an ecological reserve is prohibited

As with wilderness areas, in ecological reserves, the Minister is authorized to impose travel restrictions in a specific period either absolutely or under authority of a permit.

In a controlled buffer zone, various administrative bodies are prevented from

authorizing strip mining and quarrying as well as diversions, undertakings or works under the *Water Resources Act*.

6. Ecological Reserves - Public Involvement

The Advisory Committee on Wilderness Areas and Ecological Reserves, described above in part B5, includes within its legislative mandate, the ability to make recommendations to the Minister on the same matters as apply to wilderness areas. In fact, based on a sampling of the Advisory Committee's Annual Reports, it is apparent that the designation and management of ecological reserves was its primary focus.⁸

The Act requires that public notice be provided before an ecological reserve is established, disestablished or altered. Notice must be given at least 60 days before the effective date of the proposed action and in addition to the *Alberta Gazette*, it must be included in the major daily newspapers in Alberta as well as at least one of the local weeklies.

7. Ecological Reserves - Management Plans

The general process for the development of management plans for ecological reserves is set out in the *Tenth Annual Report of the Advisory Committee on Wilderness Areas and Ecological Reserves*, at p. 13. This process is not binding, and the government department with the responsibility for the ecological reserve is the one with the obligation to ensure that a management plan is completed for the area.

Following is the ecological area management planning process identified by the Advisory Committee:

Step 1: Preparation of a Terms of Reference

- Step 2: Approval of a Terms of Reference
- Step 3: Identification of a Planning Team
- Step 4: Preparation of a Draft Plan
- Step 5: Review of the Draft Plan
- Step 6: Preparation of the Final Plan
- Step 7: Approval of the Final Plan
- Step 8: Implementation of the Plan
- Step 9: Future Review and Revision of the Plan

Of Alberta's 14 ecological reserves, only one, Kennedy Coulee, has reached step 8, which is the implementation of the management plan. Of the rest, two ecological reserves, Crow Lake and Hand Hills have achieved step 6, Upper Bob Creek has reached step 5, Goose Mountain, Plateau Mountain, Silver Valley and Wainwright Dunes are at step 4, and the remaining two, Kootenay Plains and Rumsey are at early stages in the planning process. The management planning process has not started for four ecological reserves which are: Athabasca Dunes, Egg Island, Marshybank and Whitemud Falls.

The Advisory Committee's *Tenth Annual Report* also identifies the government agencies responsible for preparing each management plan. According to the chart on p. 14, the Land and Forest Service is responsible for four ecological reserves, the Land and Forest Service and Parks Service are jointly responsible for three ecological reserves, Parks Service is responsible on its own for three, Agriculture, Food and Rural Development is responsible for two reserves, and Kananaskis Country is responsible for one reserve. It should be noted that the Forest Service, Park Service and Kananaskis are now part of the Natural Resources Service, Alberta Environmental Protection.

8. Ecological Reserves - Enforcement

The enforcement provisions described earlier in this part for wilderness areas, also apply to ecological reserves.

9. Ecological Reserves - Extent of Designation

There are 14 ecological reserves in Alberta. They are listed below with their date of establishment and size.

- a. Athabasca Dunes
 - established June 25, 1987
 - 14.55 square miles
- b. Crow Lake
 - established June 25, 1987
 - 3.62 square miles
- c. Goose Mountain
 - established June 25, 1987
 - 4.81 square miles
- d. Kootenay Plains
 - established June 25, 1987
 - 12.37 square miles
- e. Marshybank
 - established June 25, 1987
 - 3.2 square miles
- f. Silver Valley
 - established June 25, 1987
 - 6.97 square miles
- g. Whitemud Falls
 - established June 25, 1987
 - 3.3 square miles
- h. Kennedy Coulee
 - established October 22, 1987
 - 4.13 square miles

- i. Hand Hills
 - established January 14, 1988
 - 8.61 square miles
- j. Wainwright Dunes
 - established January 14, 1988
 - 10.89 square miles
- k. Upper Bob Creek
 - established February 16, 1989
 - 10.04 square miles
- l. Rumsey
 - established September 13, 1990
 - 13.25 square miles
- m. Plateau Mountain
 - established December 12, 1991
 - 8.97 square miles
- n. Egg Island
 - October 15, 1992
 - 0.36 hectares

No controlled buffer zones have been established for ecological reserves.

D Natural Areas

1. Natural Areas - Authority for Designation

Natural areas are designated under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. However, only one provision of this Act, s. 12.1, specifically applies to natural areas.

2. Natural Areas - Administration

Natural areas are administered by the Natural Resources Service and Land and

Forest Service of the Department of Environmental Protection and the Department of Agriculture, Food and Rural Development.

3. Natural Areas - Purpose of the Designation

The Preamble to the Act, set out earlier in respect to wilderness areas, also applies to natural areas. However, s. 12.1 of the Act gives greater specificity on the function of natural areas. According to that section, natural areas can be established to "protect sensitive or scenic public land from disturbance, and ensure the availability of public land in a natural state for use by the public for recreation, education or any other purpose".

In the Department's own words, natural areas serve this purpose:

Compared with other conservation sites, Natural Areas straddle the middle, between strictly protected lands, where many human activities are prohibited, and intensively developed recreation sites. Natural Areas offer Albertans opportunities for nature appreciation, environmental education, natural history research and outdoor recreation.⁹

4. Natural Areas - Designation Process

Natural areas are created by way of a Cabinet regulation. Currently, there are two regulations which create natural areas: the *Kootenay Plains Natural Area Regulation*,¹⁰ which provides for the establishment of the Kootenay Plains Natural Area, and the *Natural Areas Regulation*¹¹ which provides for the creation of 72 other natural areas. Each time a new natural area is created, the *Natural Areas Regulation* is amended to include its name, number and legal description.

The Act also deems any natural areas created under the *Public Lands Act*, the *Provincial Parks Act* or any predecessor of those Acts to have been designated under

the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. A total of 94 sites were set aside as natural areas under the *Public Lands Act*, but it is the Department's view that as they were "set aside" under the *Public Lands Act* rather than "designated", they may not be deemed natural areas under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*.

5. Natural Areas - Permitted and Prohibited Uses

Little is said in the Act or regulations about what activities are prohibited or permitted in natural areas. The only restriction in the Act is found in s. 12.1(2), which requires the consent of the Minister of Environmental Protection before a disposition under the *Public Lands Act* or a timber disposition under the *Forests Act* is made for land in a natural area. The *Natural Areas Regulation* contains specific limitations on modes of travel in one natural area, the Beehive Natural Area. Presumably, by inference, all other forms of activity are permitted in a natural area.

6. Natural Areas - Public Involvement

Nothing in the Act or regulations applicable to natural areas requires public involvement for either the designation or operation of natural areas. Nonetheless, the government has developed an extensive volunteer stewardship program for natural areas whereby volunteers become involved in patrolling, inspecting and reporting on the conditions in selected natural areas. Volunteer stewards can be either individuals, not-for-profit societies or even corporations. At a minimum, volunteer stewards are required to:

- visit the natural area at least once a year
- report any destruction or alteration to the natural area as a result of inappropriate activities

- locate and maintain signs along the boundary
- submit an annual natural areas inspection form to the Department

Additional projects such as conducting biological inventories, installing bird houses and minor fence repairs can be undertaken. There are volunteer stewards for more than half of Alberta's natural areas.

Volunteer stewards who incorporate a Society can be eligible for a long term lease or license in a natural area.

7. Natural Areas - Management Plans

Although the Act does not make provision for natural areas management plans, it is the long-term intent of the Department to develop a management plan for each candidate and established natural area,¹² and indeed, some management plans have been finalized. For example, the *Beehive Natural Area Management Plan*,¹³ is a 40 page document which addresses such matters as resource use, management strategies, administrative roles and responsibilities and operational procedures. Interestingly, the volunteer stewards for the Beehive Natural Area are Cowley Forest Products and the Alberta Wilderness Association.

8. Natural Areas - Enforcement

The *Wilderness Areas, Ecological Reserves and Natural Areas Act* creates no offenses respecting natural areas.

9. Natural Areas - Extent of Designation

There are currently 149 natural areas in Alberta. An additional 144 candidate areas are protected by a reservation under the *Public Lands Act*.

E *Provincial Parks*

1. Provincial Parks - Authority For Designation

Provincial parks are authorized by the *Provincial Parks Act*¹⁴ and the regulations enacted under that Act.

The *Provincial Parks Act* also authorizes the creation of recreation areas which are discussed below in Part E of this section.

2. Provincial Parks - Administration

This Act is the responsibility of the Minister of Environmental Protection, and more particularly the Natural Resources Service and Land and Forest Service of the Department. The Act provides, in s. 2 for the appointment of park rangers and others to administer the Act. As well, the act says in s. 2.1 that a number of officials appointed under other acts can be designated by the Minister as park rangers. They are: forest officers under the *Forests Act*, wildlife officers under the *Wildlife Act*, and fisheries officers under the federal *Fisheries Act*.

3. Provincial Parks - Purpose of the Designation

S. 3 of the Act expressly sets out the purposes of parks which are:

- (a) for the conservation and management of flora and fauna,
- (b) for the preservation of specified areas and objects therein that are of geological, cultural, ecological or other scientific interest, and
- (c) to facilitate their use and enjoyment for outdoor recreation.

4. Provincial Parks - Designation Process

The provincial cabinet may by order designate and name land owned or leased by the Crown as a provincial park and increase or decrease the land in a provincial park (s.7). Cabinet is also authorized by s. 6 of the Act to purchase, expropriate or otherwise acquire land or buildings by the Minister of Environmental Protection for a provincial park. Any provincial parks designated under predecessor legislation are continued as parks under this Act.

There is a separate regulation for each provincial park designated under the *Provincial Parks Act*. The regulation names the provincial park and sets out the legal description of the park in a schedule to the regulation.

S. 7.1 of the Act authorizes the Minister to pass regulations making provisions of the Act and regulations applicable to land under the Minister's administration but which is not formally designated as a provincial park. Pursuant to this section, the *Section 7.1 Declaration Regulation*,¹⁵ in ss 3 and 16, declares specified parts of the Act and regulations to apply to lands listed in Schedules 3 and 16 as though they were a park. Both provisions contain a sunset clause specifying the date on which the provision ceases to operate.

5. Provincial Parks - Prohibited and Permitted Uses

The Minister is given the general power under the Act, to, by order, close all or any part of a park for any period considered necessary (s.13(1)(a)).

More specifically, the Act and regulations contain extensive provisions setting out what can and cannot be done in provincial parks. They are described below by category of use.

As well, the *Dispositions Regulations*,¹⁶ enacted under the authority of the *Provincial Parks Act*, in ss 1.1-26 contain general provisions applicable to all dispositions granted under the Act. They address such matters as the requirement for an application (s.2), a prohibition against waste on the park land (s.8(f), cutting trees or timber, unless expressly authorized in the disposition (s.8(l), renewal of the disposition (s.15), cancellation of the disposition on 12 months notice (s.18), liability for damage (s.23), requirement to give security (s.24(1.1)), the construction of an access road (s.25), and so on.

a. Residences

Residences are prohibited in provincial parks unless these conditions are met: they are associated with Departmental staff or those maintaining or supervising the park, they have a written authorization from the Minister or they are authorized under a disposition (s.10(1)).

Under the *Dispositions Regulations*, the Minister can grant summer cabin dispositions whereby the holder is authorized to construct a summer cabin for the sole use and benefit of the holder (ss 42-46).

b. Resource Development

The *Dispositions Regulations* expressly authorize the Minister to grant mineral surface dispositions to parties who have the right to work mines and minerals in or under park land to, for example, search for mines and minerals, carry out mining or drilling operations, lay pipe, and so on (ss 27-28).

The regulation also authorizes the Minister to grant pipeline dispositions in the nature of easements to transmit any fluid or gaseous substance (ss 47-57). The regulation requires that the holder bury his pipe, unless prior written approval is

provided by the Minister, and that the land is restored in a manner satisfactory to the Minister (s.57).

The regulation authorizes the Minister to grant sand and gravel dispositions (ss 58-65) and clay and marl dispositions (ss 66-73). Both require the submission of a cash deposit (ss 59(c), 67(c)) and the restoration of the land according to the Minister's instructions (ss 64(1), 72(2)).

The Minister is authorized to grant utility dispositions in the nature of utility rights-of-way in provincial parks (ss 74-82). (Utilities include works to produce or transmit telephone, telegraph, water, heat, light or power, but do not include a pipeline.) On the completion of the installation of the utility, the holder must restore the park to a condition satisfactory to the Minister (s.82).

c. Agricultural Uses

Under the regulation, the Minister may grant cultivation dispositions allowing the holder to sow and harvest crops in the park (ss 29-31), hay dispositions (ss 32-34), and grazing dispositions (ss 35-41). Regarding the latter, the Minister may prepare and adopt, for grazing dispositions, a range management plan setting out such terms as the maximum number of livestock to be grazed (s.40).

d. Transportation

Unless the Minister so authorizes, the Act prohibits anyone from taking off or landing an aircraft in a park or on water in or that comprises part of a park (s.15.1).

e. Park Management

The Act gives the Minister the power to enter into agreements for the

construction, operation or maintenance of park facilities and concerning the provision of services in respect of those parks (s.9(c)). In association with those agreements, the Minister may make any dispositions necessary to carry out the terms of the agreement (*Dispositions Regulations*, s.1.1).

The *General Regulation*¹⁷ passed under the *Provincial Parks Act* contains the rules for the operation of provincial parks and recreation areas. The regulation addresses such recreation related matters as the payment of a park fee (s.2), removing firewood (s.14.1), and the use of fires (s.20).

The following prohibitions in this regulation are especially pertinent to this legal review:

- horses, ponies or beasts of burden can only be brought into an area of a provincial park which has been established for equestrian uses (s.19)
- the use of off-highway vehicles are limited to trails identified for that use or other places the public is ordinarily entitled to use for such purposes or other places authorized by the Minister (s.27)
- overnight camping is limited to areas designated for that purpose unless authorized by a park ranger and a permit (s.35)
- a Ministerial permit is required before anyone can do any of the following: collect or remove flora, fauna or geological specimens, collect or excavate for historic resources, do studies requiring interviews of park visitors, do research work in an area where public access is restricted or prohibited, do research that will result in physical disturbance to the land or any other significant adverse effect on the environment or involved setting up scientific monitoring instrument of structures or undertake research that requires significant assistance from government employees (s.45)
- it is permissible to possess a firearm in a provincial park only if the

person holds a permit issued under the section and there is an open season under the *Wildlife Act* in an area adjacent to the park and the person is authorized to hunt the kind of wildlife to which the open season applies (s.46(1))

- a firearm can be discharged in a provincial park only where it is authorized by a permit granted under the section (s.46(1.1))

6. Provincial Parks - Public Involvement

There is no express provision in the Act or regulations respecting public involvement.

7. Provincial Parks - Management Plans

The Minister of Environmental Protection is authorized under s. 13(1)(d) of the Act to zone any part of a park to regulate or confine the various uses of land, resources and water in a park. In fact, there are management plans in place for some provincial parks.

As an example, the *Hasse Lake Provincial Park Management Plan* which was finalized in June, 1994, deals with the following matters, amongst others: objectives, zoning and management guidelines, land management guidelines, development requirements, public involvement and information and implementation and review.

8. Provincial Parks - Enforcement

A discussion on the topic of "enforcement" in provincial parks must begin with a review of the powers of park rangers. The Act, in s. 16(4) declares that a park ranger in the exercise of his or her duties is a person employed for the preservation and maintenance of the public peace. In addition, s. 16 gives park rangers express

powers to enter onto and inspect any land, road, highway, structure or work, in a park.

Regarding offences, the Act declares, in s. 18, that any person contravening the Act or regulations is guilty of an offence and liable to a fine of not more than \$2,000 or imprisonment of not more than 6 months, or both.

9. Provincial Parks - Extent of Designation

There are currently 64 Alberta regulations each designating one provincial park. On January 19, 1996, Hon. Ty Lund announced the creation of two provincial parks, the Elbow-Sheep Wildland Provincial Park and the Wild Kakwa Wildland Provincial Park. The Elbow-Sheep Wildland Provincial Park was formally established as a provincial park by the *Elbow-Sheep Wildland Provincial Park Regulation*, Alta. Reg. 4/96. The Wild Kakwa Wildland Provincial Park has not yet been formally designated, but designation is expected soon. The Wild Kakwa is currently a Forest Land Use Zone and is discussed in Section I of this part.

F Recreation Areas

1. Recreation Areas - Authority for Designation

Recreation areas, like provincial parks, are authorized by the *Provincial Parks Act*. Because of the similarities between the forms of designation, only the differences between the two will be highlighted in this section.

2. Recreation Areas - Administration

As with provincial parks, recreation areas are the responsibility of the Minister of Environmental Protection, Natural Resources Service and Land and Forest Service.

3. Recreation Areas - Purpose of the Designation

The purpose of recreation areas is set out in s. 4 of the Act as follows:

recreation areas shall be developed and maintained to facilitate their use and enjoyment for outdoor recreation.

4. Recreation Areas - Designation Process

Recreation areas are designated by provincial Cabinet order (s.7). Any Crown land owned by or leased to the Crown can be established as a recreation area; as well, the Minister can purchase, expropriate or otherwise acquire land, buildings or other fixtures on land for the purpose of a recreation area (s.6).

There are currently two regulations whereby recreation areas are designated: the *Provincial Recreation Areas Regulation*¹⁸ and the *Kananaskis Country Provincial Recreation Areas Regulation*.¹⁹ Each contains schedules setting out the name and legal description of a recreation area.

5. Recreation Areas - Prohibited and Permitted Uses

As with provincial parks, the Minister is authorized by the Act, to, by order, close all or any part of a park for any period considered necessary (s.13(1)(a)).

The extensive list of prohibited and permitted activities derived from the *Dispositions Regulation* and the *General Regulation*, described above in relation to provincial parks, apply equally to recreation areas.

6. Recreation Areas - Public Involvement

There is no express provision in the Act or regulations respecting public involvement.

7. Recreation Areas - Management Plans

The Minister of Environmental Protection is authorized under s. 13(1)(d) of the Act to zone any part of a park to regulate or confine the various uses of land, resources and water in a park. At present, there is one draft management plan for an Alberta recreation area.

8. Recreation Areas - Extent of Designation

There are 87 recreation areas designated under the *Kananaskis Country Provincial Recreation Areas Regulation* and 95 recreation areas designated under the *Provincial Recreation Areas Regulation*.

G Willmore Wilderness Park

1. Willmore - Authority for Designation

The Willmore Wilderness Park is authorized under the *Willmore Wilderness Park Act*.²⁰ The Act applies to the Willmore Wilderness Park only and does not apply to or affect the status of any other type of designated area in Alberta. This method of designation is unique in Alberta; from earlier sections, it will be apparent that in all other cases, an Act or regulation creates a form of designated area with specific areas created by regulation or schedule to an Act or regulation.

It should be noted that important amendments were made to the Act by way of the *Willmore Wilderness Park Amendment Act, 1995*.²¹

2. Willmore - Administration

The Willmore Wilderness Park comes under the administration of the Department of Environmental Protection, Land and Forest Service.

3. Willmore - Purpose of the Designation

The purpose of the park is set out in s. 3 of the Act as follows:

The Park is dedicated to the use of the people of Alberta for their benefit, education and enjoyment, subject to this Act and the regulations, and shall, by the management, conservation and protection of its natural resources and by the preservation of its natural beauty, be maintained for the enjoyment of future generations.

4. Willmore - Designation Process

The legal description for the Willmore Wilderness Park is to be found in a Schedule to the Act. The provincial Cabinet is authorized, in s. 2(2) of the Act, to increase the area of the park by adding land adjacent to it or decreasing the park by withdrawing land from it. The provision does not specify whether the Act must be amended to change the park boundaries or whether the Cabinet can effect the change by order.

5. Willmore - Permitted and Prohibited Uses

The Act prohibits anyone from conducting industrial activities in the park; industrial activities include but are not necessarily limited to mining, geological and

geophysical exploration, water management, hydro-electric power and pulp and paper mills, saw mills and other forestry related industries (s.4). Moreover, the Act prohibits the granting, within the park of the following forms of land disposition (s.5(1):

- a disposition under the *Public Lands Act* and regulations
- a timber disposition under the *Forests Act*
- a disposition under the *Mines and Minerals Act*
- any authorization under any Act or regulation for the purpose of geophysical or geological exploration or for the purposes of water conservation or hydro-electric power
- any estate or interest in land under any other Act or regulation

Nevertheless, the Crown is authorized to grant fur management licences and dispositions to assist in trapping and authorizations relating to insect control or forest diseases or to commercial trail riding, guiding or outfitting operations (s.5(2)).

Subject to the list of permitted and prohibited activities listed above, Cabinet can still make regulations altering the provisions of various acts and regulations as they apply to the Willmore Wilderness Park (s.6).

In addition, there are prohibitions on activities within the Willmore Wilderness Park found in the *Forest Land Use and Management Regulations*²² enacted under the *Forests Act*. The regulation prohibits the operation of off-highway vehicles and motor vehicles and the landing of aircraft in the park (s.5) except for people employed by the government in preventing or extinguishing a forest fire or managing a natural resource, transporting people or equipment for government work or removing a seriously ill or injured person (s.6). Under the regulation, the Minister can order that entry into all or part of the park be restricted or prohibited (s.7); as well, either damaging or removing any live tree, mineral, rock or soil or erecting any structure other than a tent is prohibited without the written permission of the Director (s.8).

6. Willmore - Public Involvement

There are no provisions in the Act requiring any form of public involvement.

7. Willmore - Management Plans

The matter of the management of the Willmore Wilderness Park is not dealt with explicitly in the Act. However, a draft management plan has been prepared.

8. Willmore - Extent of Designation

The area of the Willmore Wilderness Park is 1,774.8 square miles.

H Wildlife Sanctuaries

1. Wildlife Sanctuaries - Authority for Designation

Alberta's *Wildlife Act*²³ contains provisions offering protection of wildlife and wildlife habitat through the establishment of wildlife sanctuaries, wildlife corridor sanctuaries, game bird sanctuaries, seasonal sanctuaries, habitat development areas, migratory bird lure sites and wildlife control areas. Applicable regulations are the *General Wildlife Regulation*²⁴ and the *General Wildlife (Ministerial) Regulation*²⁵. Because of the similarity of the designations, all are dealt with in this section; they are referred to collectively as "wildlife sanctuaries".

2. Wildlife Sanctuaries - Administration

Wildlife sanctuaries are the responsibility of the Minister of Environmental Protection, Natural Resources Service.

The Act gives the Minister the power to appoint officials with special powers to enforce the Act and regulation. As well, various other enforcement authorities are designated ex-officio wildlife officers: all members of the RCMP, forest officers appointed under the *Forests Act*, park rangers appointed under the *Provincial Parks Act*, and all members of the Alberta Highway Patrol of the Department of Justice (s.2(2)).

S. 3 of the Act authorizes the Minister to appoint wildlife guardians; they only have the powers and duties granted under the Act, or any other law and other duties directed by the Minister.

Both wildlife officers and wildlife guardians are, while executing their duties, peace officers; the exception is that wildlife guardians do not have the authority to exercise powers of arrest (s.64).

3. Wildlife Sanctuaries - Purpose of the Designation

Neither the Act nor the applicable regulations contain any provisions describing the purpose of wildlife sanctuaries. However, given the nature of the activities prohibited on the various types of sites, it can be inferred that the objective of wildlife sanctuaries is to offer protection to wildlife species, and to a lesser extent, wildlife habitat, through the prohibition of certain activities, primarily hunting.

4. Wildlife Sanctuaries - Designation Process

The authority to establish wildlife sanctuaries is to be found in the regulation-making powers in the *Wildlife Act*. Specifically, ss 96(1)(d), (e) give Cabinet the power to establish wildlife sanctuaries and habitat development areas and to classify wildlife sanctuaries into those that protect all species of wildlife or those which protect only prescribed species. "Sanctuaries", which consist of wildlife sanctuaries,

game bird sanctuaries, restricted areas (lakes), restricted areas (rivers), seasonal sanctuaries, and corridor wildlife sanctuaries are described, by name and legal description in Schedule 4 to the *General Wildlife Regulation*. Habitat development areas are described, by name and legal description, in Schedule 15 to the *General Wildlife Regulation*.

In addition, s. 97(e) of the *Wildlife Act* authorizes the Minister to pass regulations establishing migratory bird lure sites or wildlife control areas. Accordingly, Schedule 4 of the *General Wildlife (Ministerial) Regulation* establishes and describes wildlife control areas and Schedule 5 of the regulation does the same for migratory bird lure sites.

5. Wildlife Sanctuaries - Permitted and Prohibited Uses

Permitted and prohibited uses for each type of wildlife sanctuary noted above are set out in the *General Wildlife (Ministerial) Regulation*. Each is listed separately with a description of the prohibited uses within the area.

Wildlife Sanctuary

The regulation prohibits the hunting of wildlife, and possessing or discharging of a weapon in a wildlife sanctuary unless it is expressly authorized by a license or permit (s.30(1)). This limitation does not apply where someone is crossing a wildlife sanctuary with an unloaded firearm that is either completely enclosed or is dismantled (s.30(2)). Further, in a wildlife sanctuary, the wilful destruction or disturbance of a house, nest and den of all wildlife is prohibited throughout the year.

Game Bird Sanctuaries

The hunting of game birds in a game bird sanctuary is prohibited unless expressly authorized by a licence (s.32(a)). As well, the possession of a shotgun in a game bird sanctuary is prohibited unless it has been authorized in writing by a wildlife officer or a person is crossing a game bird sanctuary and is in possession of a shotgun that is not loaded and is completely enclosed or dismantled (s.33). In a game bird sanctuary, the wilful destruction or dismantling of the nests of game birds is prohibited throughout the year (s.34).

Restricted Areas

In a restricted area, the hunting of game birds, except during the open season for game birds after October 31, is prohibited unless it is expressly authorized by a licence (s.32).

Seasonal Sanctuaries

From April 15 to September 15, entering a seasonal sanctuary or coming within 0.5 miles of a seasonal sanctuary is prohibited (s.35(1)). The latter restriction does not apply to three specific seasonal sanctuaries which are described fully in items 6, 7, and 9 of Part 4 of Schedule 4 of the *General Wildlife Regulation* and which can be loosely described as two portions in the island in Lower Therien Lake and the islands in the Slave River (s.35(2)).

Wildlife Corridor Sanctuary

The regulation prohibits the hunting of wildlife, and possessing or discharging of a weapon in a wildlife corridor sanctuary unless it is expressly authorized by a license or permit (s.30(1)). This limitation does not apply where someone is crossing

a wildlife corridor sanctuary with an unloaded firearm that is either completely enclosed or is dismantled (s.30(2)). Further, the requirement that a firearm be completely enclosed or dismantled does not apply to a person travelling on foot or horseback by the shortest route to an area outside the wildlife corridor sanctuary (s.30(3)).

Habitat Development Area

The regulation prohibits anyone from being in or parking a vehicle in a habitat development area between 11:00 p.m. and 4:00 a.m. unless overnight camping is permitted by the Minister and all vehicles are left in a developed parking area (s.36). As well, the following activities are prohibited unless permitted by the Minister as evidenced by a sign or pursuant to a letter from the Minister (s.38):

- leaving a horse unattended
- establishing or attending at a camp
- lighting, adding fuel to or attending at an open fire
- hunting
- discharging a firearm
- erecting a sign or poster
- operating a vehicle except on a developed road or developed parking lot

Migratory Bird Lure Site

Hunting on or over a migratory bird lure site is prohibited (s.39(a)). As well, entering a migratory bird lure site is prohibited unless authorized by a wildlife officer (s.39(b)).

Wildlife Control Area

Hunting on or over a wildlife control area is prohibited (s.40(1)(a)). Further, entering a wildlife control area is prohibited unless authorized by a wildlife officer (s.40(1)(b)). These restrictions do not apply to someone holding a registered fur management licence or the child or spouse of someone authorized to hunt fur-bearing animals under the authority of a registered fur management licence.

6. Wildlife Sanctuaries - Public Involvement

There are no provisions in the Act or regulations providing for public involvement in the establishment or management of wildlife sanctuaries. However, it is notable that the Act established the Fish and Wildlife Trust Fund which has as one of its purposes: "funding prescribed programs for the protection and enhancement of fish and wildlife in Alberta and their habitats" (s.6(a)).

7. Wildlife Sanctuaries - Management Plans

S. 97(g) of the Act authorizes the Minister to make regulations "providing for the use, control and management of wildlife sanctuaries, habitat development areas, migratory bird lure sites and wildlife control areas or any part of any of them" [emphasis added]. However, other than the limitations noted earlier with respect to "permitted and prohibited uses" there are no other management-type stipulations in the regulations for wildlife sanctuaries.

8. Wildlife Sanctuaries - Enforcement

The *Wildlife Act* contains comprehensive enforcement provisions. Ss 64-82 of the Act set out the powers and responsibilities of those enforcing the Act respecting search and seizure. For example, the Act gives a wildlife officer or wildlife guardian

the power to enter onto land, without warrant, in the execution of his duties, with ensuing liability for wilful damage only (s.65), to require a person believed to have been hunting, to produce his hunting licence (s.67(1)), to seize anything that he believes on reasonable and probable grounds may afford evidence of an offence under the Act (s.73(1)), and so on.

Anyone contravening the Act is guilty of an offence (s.86). The Act sets out a range of penalties for offenses depending on the severity of the offence. Anyone convicted of an offence under the Act where the penalty is not specifically provided for is liable to a fine of not more than \$2,000 or imprisonment for a term of not more than 1 month or both (s.93).

Examples of other penalties under the Act which may arise in regard to wildlife sanctuaries are:

- hunting outside an open season, or if there is no open season (other than endangered species) - liable to a fine of not more than \$2,500 or imprisonment for a term of not more than 1 month, or both (s.92(1)(c)).
- using a vehicle, aircraft or boat with intent to harass, injure or kill wildlife - liable to a fine not exceeding \$5,000 or imprisonment for a term of not more than 2 months, or both (s.92(4)(a)).
- hunting an endangered species outside an open season, or if there is no open season - liable to a fine of not more than \$100,000 or imprisonment of not more than 6 months, or both (s.92(4)(a)).

9. Wildlife Sanctuaries - Extent of Designation

Following is a list of the various forms of wildlife sanctuaries with an indication of the number of sites currently designated in Alberta.

Wildlife Sanctuaries - 2

Game Bird Sanctuaries - 7

Restricted Areas (Rivers) - 42

Restricted Areas (Lakes) - 6

Seasonal Sanctuaries - 9

Corridor Wildlife Sanctuaries - 12

Habitat Development Areas - 4

Migratory Bird Lure Sites - 27

Wildlife Control Areas - 7

I Forest Land Use Zones

1. Forest Land Use Zones - Authority for Designation

The Alberta *Forests Act*²⁶ provides the legislative authority for the establishment of forest land use zones. Administrative and management details concerning forest land use zones are found in the *Forest Recreation Regulation*.²⁷

2. Forest Land Use Zones - Administration

Forest land use zones are the responsibility of the Minister of Environmental Protection, and in particular, the Land and Forest Service of the Department of Environmental Protection.

The *Forests Act* identifies specific officials as having responsibilities under the Act and regulations, being forest officers (s.2). In addition, the following have the same powers as forest officers appointed under the *Forests Act*: all members of the RCMP, wildlife officers, fishery officers and park rangers (s.3). Any forest officer who is exercising his duties under the Act is a peace officer (s.45).

3. Forest Land Use Zones - Purpose of the Designation

There is no reference in either the *Forests Act* or the *Forest Recreation Regulation* to the purpose of forest land use zones. Practically speaking, the purpose of forest land use zones must be discerned from the permitted and prohibited uses in such zones which are described below.

4. Forest Land Use Zones - Designation Process

S. 46(a) of the Act authorizes the provincial Cabinet to make regulations declaring any area of forest land to be a forest land use zone. ("Forest land" is defined in the Act to mean "public land intermittently covered with forest growth (s.1(d)). The actual process for designating forest land use zones is unusual. The *Forest Recreation Regulation*, contains 10 sections,²⁸ each one listing and naming a single forest land use zone and indicating which schedule to the regulation contains the legal description for that particular forest land use zone. For example, s. 2 of the regulation declares that the land described in Schedule A is the Kananaskis Country Forest Land Use Zone. Schedule A, which is appended to the regulation, contains the legal description for the Kananaskis Country Forest Land Use Zone.

5. Forest Land Use Zones - Permitted and Prohibited Uses

The *Forest Recreation Regulation* contains a general prohibition that applies to all forest land use zones, and a number of prohibitions that attach to specific forest

land use zones only. In all forest land use zones, the regulation requires that all persons comply with the lawful orders and instructions of forest officers and any signs and notices posted about the forest land use zone (s.8). As well, the regulation prohibits anyone from camping or starting or maintaining a fire within one kilometre of a roadway located within the Kananaskis Country Forest Land Use Zone, the McLean Creek Off-Highway Vehicle Forest Land Use Zone, the Sibbald Snow Vehicle Forest Land Use Zone or the Cataract Creek Snow Vehicle Forest Land Use Zone (s.9(3)).

With respect to forest land use zone-specific prohibitions, the regulation lists prohibitions for the following forest land use zones: Kananaskis Country and Wild Kakwa Forest Land Use Zones (in s.11); the McLean Creek Off-Highway Vehicle Forest Land Use Zone (in ss 12-13); the Sibbald Snow Vehicle Forest Land Use Zone and Cataract Creek Snow Vehicle Forest Land Use Zone (in ss 14-15); the Blackstone/Wapiabi Forest Land Use Zone, Job Lake Forest Land Use Zone, Panther Corners Forest Land Use Zone and Upper Clearwater River Forest Land Use Zone (in s.15.1) and the Allison/Chinook Forest Land Use Zone (in s.15.2).

All of the forest land use zone-specific prohibitions address issues related to transportation, either the use of motor vehicles, off-highway vehicles or snow vehicles or the use of horses. For example, in the Kananaskis Country and Wild Kakwa Forest Land Use Zones, the regulation prohibits the operation of highway vehicles, except on a highway, and off-highway and snow vehicles within the forest land use zones (s.11(1)). Exceptions are provided: one, the use of motor vehicles other than on a highway is permitted to carry a government employee doing his work, where the vehicle is being used to do work in the zone which has been approved by the Minister, to remove a sick, injured or deceased person from the zone, or in places within a registered trapping area where the use of the vehicle is approved by a forest officer, and two, a motor vehicle can be operated in the Wild Kakwa Forest Land Use Zone on trails designated for that use by signs (s.11(2)(3)).

6. Forest Land Use Zones - Public Involvement

There are no provisions in the Act or regulations regarding the involvement of the public in the establishment or operation of forest land use zones.

7. Forest Land Use Zones - Management Plans

There is no express reference in the Act or regulation to management planning for forest land use zones.

8. Forest Land Use Zones - Enforcement

The Act contains a specific provision relating to contravention of the act and regulations made under Part 3 (Forest Land Uses, including forest land use zones, forest recreation areas and forest recreation trails). Anyone contravening these sections is liable to a fine of no more than \$1,000 and in default, imprisonment for no more than 60 days (s. 50). Anyone unlawfully obstructing a forest officer is liable to a fine of no less than \$100 and no more than \$5,000, and in default, imprisonment for a term of not more than one year (s. 51).

9. Forest Land Use Zones - Extent of Designation

There are currently 10 forest land use zones in Alberta.

J Forest Recreation Areas

1. Forest Recreation Areas - Authority for Designation

The *Forests Act* and the *Forest Recreation Regulation* provide for the establishment of forest recreation areas and forest recreation trails. Because of the

similarity between the two legal mechanisms, both will be addressed in this part; however, where there is a difference between the two, the details of the difference will be highlighted.

2. Forest Recreation Areas - Administration

Both forest recreation areas and forest recreation trails are the responsibility of the Minister of Environmental Protection and more particularly, the Land and Forest Service of the Department of Environmental Protection.

Forest officers, described above in relation to forest land use zones, also have authority under the *Forests Act* for forest recreation areas and forest recreation trails.

In addition, the Minister is authorized by the Act to construct and maintain forest recreation areas and forest recreation trails (s.11).

3. Forest Recreation Areas - Purpose of the Designation

As with forest land use zones, the *Forests Act* and the *Forest Recreation Regulation* contain no specific reference to the purpose of forest recreation areas and forest recreation trails. Accordingly, the purpose must be drawn from the other sections of the Act and regulations, particularly those specifying the permitted and prohibited uses in the areas.

4. Forest Recreation Areas - Designation Process

The Act authorizes the provincial Cabinet to make regulations declaring any area of forest land to be a forest recreation area or forest recreation trail (s.46(c)) and governing the use of the land including prohibiting, regulating or controlling activities on them (s.46(d)). S. 6 of the *Forest Recreation Regulation* states that areas listed and described in Schedule E to the regulation are forest recreation areas, and similarly,

s. 7 says that areas listed in Schedule F are forest recreation trails. Accordingly, Schedule E lists forest recreation areas and Schedule F lists forest recreation trails. Interestingly, both schedules classify either forest recreation areas or forest recreation trails by forest beginning with the Athabasca Forest.

5. Forest Recreation Areas - Permitted and Prohibited Uses

For both forest recreation areas and forest recreation trails, the Act authorizes the Minister to issue an order prohibiting or restricting entry or prohibiting any use of activity, notwithstanding the regulations (s.47). As well, forest officers are empowered by the Act to order any person in a forest recreation area or forest recreation trail to stop doing anything that is dangerous to life or property or detrimental to the management or use of the area (s.48).

Ss 16-25.91 of the *Forest Recreation Regulation* set out the rules applicable to forest recreation areas. S.16 pertains to the use of motor vehicles in forest recreation areas. Specifically, the use of motor vehicles in forest recreation areas is prohibited with these exceptions: one, an on-highway vehicle can be used on a highway to transport people to or from camping or picnic sites as long as the specified speed limit is followed, and two, a snow vehicle can be operated at locations where it is permitted by posted signs as long as the snow depth is sufficient and maximum speed limits are complied with.

The balance of the sections in the regulation to s. 25.91 deal essentially with matters pertaining to camping such as the maximum length of stay (s.18); removal of firewood (s.25); waste disposal (s.25.31); and maximum number of persons allowed at a campsite (s.25.7). Of particular note is the prohibition against bringing horses into a forest recreation area unless the area is set up for equestrian activities and a forest officer has approved that equestrian activity in that area (s.21(1)) and the absolute prohibition against bringing cattle into a forest recreation area (s.21(2)).

For forest recreation trails, the regulation provides the following prohibitions. The operation of a motor vehicle on a forest recreation trail is prohibited; snow vehicles can be operated on forest recreation trails designated by signs for that use as long as maximum speed limits are met (s.26). The only other prohibition applicable to forest recreation trails is one which requires anyone bringing a pet animal into the area to keep it on a leash or under some other physical constraint (s.27).

6. Forest Recreation Areas - Public Involvement

No part of the Act or regulation provides for public involvement in respect to forest recreation areas or forest recreation trails.

7. Forest Recreation Areas - Management Plans

There is no express mention in the Act or regulation of management planning for forest recreation areas or forest recreation trails.

8. Forest Recreation Areas - Enforcement

S. 49 of the *Forests Act* authorizes a forest officer to impound a vehicle or other property if it is interfering with the management or use of a forest recreation area or forest recreation trail or if it is abandoned.

The offences noted above in relation to forest land use zones also apply to forest recreation areas and forest recreation trails. An additional relevant offence is found in s. 51(e) which makes it an offence not to comply with an order of a forest officer made under s. 48 of the Act (to refrain from doing something dangerous to life or property or detrimental to the management or use of a forest recreation area or forest recreation trail). Conviction can result in a fine of no less than \$100 and no more than \$1,000 and in default, imprisonment for a term of no more than one year.

9. Forest Recreation Areas - Extent of Designation

Currently in Alberta there are 166 designated forest recreation areas and 11 forest recreation trails.

K Historical Resources

1. Historical Resources - Authority for Designation

Under the *Alberta Historical Resources Act*²⁹ four types of designations are available: registered historic resource, provincial historic resource, provincial historic area and municipal historic area. Each designation relates to a "historic resource" which is defined in the Act to mean:

any work of nature or of man that is primarily of value for its palaeontological, archaeological, prehistoric, historic, cultural, natural, scientific or aesthetic interest including, but not limited to, a palaeontological, archaeological, prehistoric, historic or natural site, structure or object (s.1(f))

Although designations under the *Historical Resources Act* are often associated with historical buildings and archaeological sites, they can and have been used to designate natural history sites. Accordingly, the designations are included in this legal review. Three designations, registered historic resources, provincial historic resources, and provincial historic areas are included in this part. Municipal historic resources, which are the responsibility of Alberta municipalities are not discussed in this review.

2. Historical Resources - Administration

Historical resources are the responsibility of the Department of Community Development, Cultural Facilities and Historical Resources Division.

3. Historical Resources - Purpose of Designation

The *Historical Resources Act* does not have a purpose section. However, s. 2 of the Act which sets out the Minister's responsibilities, gives some insight into the intent of the Act. The section reads as follows:

2. The Minister is responsible for
 - (a) the coordination of the orderly development,
 - (b) the preservation,
 - (c) the study and interpretation, and
 - (d) the promotion of appreciationof Alberta's historic resources.

As well, any designation of registered historic resources and provincial historic resources require as a precondition the Minister's belief that the preservation of the historic resource is in the "public interest" (ss 15(1), 16(1)).

4. Historical Resources - Designation Process

Registered Historic Resource

A registered historic resource is a historic resource, together with land it is on or in and adjacent land, that, in the Minister's opinion is in the public interest to preserve. The designation process for a registered historic resource is a Ministerial Order. Before making such an order, the Minister must give the owner 60 days notice of his intention; after issuing the order designating a registered historic resource, the Minister must serve copies of the order on the owner of the historic resource and any other landowner who will be subject to the order; publish notice of the designation

in *The Alberta Gazette*; and where the order relates to land, register a copy in the appropriate land titles office (s.15(1), (2)). Where an order is rescinded by the Minister, copies of the rescinding order must be served on the owner of the historic resource and any other landowner subject to the order; a notice must be published in *The Alberta Gazette*; and if the original order was registered against the certificate of title, the rescinding order must be registered in the appropriate land titles office (s.15(8)).

Provincial Historic Resource

Provincial historic resources are designated by order where it is the Minister's opinion that it is in the public interest to preserve a historic resource. The designation itself is effected through a Ministerial order. Before the designation is made, the Minister must serve notice on the owner of the historic resource and any other land owner who will be subject to the order and publish notice of his or her intention to designate the provincial historic resource in *The Alberta Gazette* (s.16(1),(2)). This must be done 60 days prior to the proposed designation date (s.16(2)).

Following publication of notice, and within 30 days of notice being published, any interested person can advise The Alberta Historical Resources Foundation of an interest in making representations regarding the proposed designation (s.16(4)). After the 30 day period the Foundation must advise anyone who indicated an interest in making a representation of a date for those representations to be heard. The hearing date can be no sooner than 15 days before the proposed designation date. After the hearing, the Foundation may make recommendations to the Minister on the proposed designation (s.16(5)). Where no representations are made, or where the Foundation recommends that the designation proceed, the Minister may proceed to make the designating order. The notification and registration requirements noted above for registered historic resources apply to provincial historic resources. Similarly, an order rescinding a designation of a provincial historic resource must be served and registered

in the same manner as a registered historic resource (s.16(15)).

Provincial Historic Area

Any area of the province may be designated a provincial historic area. The designation is effected by a Cabinet regulation (s.20(1)). Following the designation of a provincial historic area, the Minister must file a notice to that effect with the Registrar of Land Titles for the land registration district where the area is situated and a memorandum of notice must be endorsed on each certificate of title pertaining to land within the area (s.21(1)). Similar requirements are imposed for amendments of the regulation establishing a provincial historic area (s.21((2)-(9)).

5. Historical Resources - Permitted and Prohibited Uses

Registered Historic Resource

The Act requires that 90 days notice be given to the Minister before any person can "destroy, disturb, alter, restore or repair any historic resource" or land designated as a registered historic resource or remove a historic object (s.15(5)). This provision also applies where a notice of intention to designate a registered historic resource has been provided; it applies for the period of time between the notice of designation and the making of the order by the Minister, the revocation of the notice of intention, or 120 days (s.15(6)). Anyone served with a notice of intention can apply to the Court of Queen's Bench for an order reducing the 120 day period (s.15(7)).

The Minister can pass regulations exempting registered historic sites from any building code if its enforcement would "prevent or seriously hinder the preservation, restoration or use of all or any portion of the site or monument" (s.47(2)). No such regulations have been passed.

Provincial Historic Resource

The Act requires that the Minister's written approval be obtained before anyone can "destroy, disturb, alter, restore or repair any historic resource" or land designated as a provincial historic resource or remove a historic object (s.16(9)). This statutory requirement for Ministerial consent is the main factor which distinguishes provincial historic resources from registered historic resources where notice is the only requirement. The Minister is given absolute discretion to refuse to grant an approval or may make his or her approval subject to conditions (s.16(10)). The Minister is also entitled to 30 days notice of any sale or other disposition of a provincial historic resource (s.16(11)) and 15 days notice of the transfer of a provincial historic resource through inheritance (s.16(12)).

The requirement for Ministerial approval applies once notice of intention to designate is given, and for a period until the Minister makes the order, revokes the order or until the expiry of 120 days (s.16(13)). Any person served with a notice of intention can apply to the Court of Queen's Bench for an order shortening the period of 120 days (s.16(14)).

Some different rules apply if the historic resource is owned by the Crown or situated on Crown land (s.18). The provisions of the section respecting notice to the owner, and so on do not apply. As well, the provisions regarding the submission of representations and a hearing by the Alberta Historical Resources Foundation do not apply. Instead, notice of designation must be given to the Minister of the Crown with responsibility for administration of the land or historic resource (s.18(b)). The Minister can restore, alter or demolish any structure located within a provincial historic resource (s.18(d)(i)).

The Minister can pass regulations exempting provincial historic sites from any building code if its enforcement would "prevent or seriously hinder the preservation,

restoration or use of all or any portion of the site or monument" (s.47(2)). No such regulations have been passed.

Provincial Historic Area

Conditions on use of or activities within a provincial historic area are to be determined through the regulation establishing the provincial historic area. Since none have been established, there are no examples to review. However, the Act gives Cabinet the power to deal with the following in a regulation establishing a provincial historic area (s.20(2)):

- use, development or occupation of land or buildings
- exercise of any power in the regulations by a Minister of the Crown or a government agency
- demolition, removal, repair, construction or reconstruction of buildings or other things
- acquisition by purchase or expropriation by a Minister of the Crown
- authorization of someone else to approve use or to exempt any use from the regulation
- construction, height, location or size of buildings
- make provisions of the *Surface Rights Act* inapplicable to Crown land
- for Crown land, prohibit expropriation under the *Expropriation Act*
- confer on any Minister of the Crown any power or duty under the regulations

Unless the regulations state otherwise, they operated notwithstanding the *Planning Act* (s.20(4)).

6. Historical Resources - Public Involvement

As noted earlier in this part, the Alberta Historical Resource Foundation has a role to play in holding hearings on the designation of provincial historic resources. The Foundation is a corporation formed under the Act with members appointed by the provincial Cabinet (s. 34). The Foundation has various other powers such as acquiring property, making grants or subsidies, education, and so on (s. 37).

7. Historical Resources - Management Plans

There are some interpretive plans and management plans for various historic resource, especially those owned by the Crown.

8. Historical Resources - Enforcement

Anyone contravening the Act or regulations, the conditions of a permit or a direction of the Minister under the Act can be liable on conviction to a fine of not more than \$50,000 or imprisonment for not more than a year or to both a fine and imprisonment (s.48(1)). Further, the Act provides for the Minister to issue a temporary stop order where he thinks someone is doing something likely to damage or destroy a historic resource that could be designated as a registered historic resource or a provincial historic resource (s.45). The temporary stop order is good for 15 days. It can be confirmed by Cabinet on recommendation of the Minister for an additional period if it qualifies for designation as a provincial historic resource. An aggrieved person can appeal either order to the Court of Queen's Bench who may confirm, vary or rescind the original order. Temporary stop orders are rarely used.

8. Historical Resources - Extent of Designation

There are currently close to 300 designated historic resources and provincial

historic resources in Alberta. Historic resources designated as provincial historic resources tend to be of greater provincial significance than registered historic resources and they are often owned by the Crown. They can and do consist of natural history sites such as a stand of douglas firs on private land in the City of Calgary.

There are no designated provincial historic areas in Alberta.

L Public Land Dispositions

1. Public Land Dispositions - Authority for Designation

The *Public Lands Act*³⁰ contains a number of provisions relevant to the issue of designating land to achieve Alberta's Special Places 2000 objectives. Notably, s.7(c)(i) of the Act empowers the Cabinet to authorize the Minister to set aside public land "for use as a provincial park, historical site, natural area, ecological reserve, wilderness area, ..., forest recreation area, wildlife sanctuary, habitat development area ...". This section gives the government the necessary technical underpinning to designate land for the purposes described in detail in this part.

There are other sections in the *Public Lands Act* authorizing the government to take action respecting Crown land that could be used to achieve Special Places 2000 objectives if no other appropriate mechanism were available. For example, the Act gives the Cabinet very broad powers to make orders that are necessary to "meet cases that arise" for which no provision is made in the act (s.7(h)(iii)) and to make regulations "permitting, prohibiting or regulating the use of any public land that is not subject to a disposition" (s.9(a.1)). These powers are very general and accordingly will not be reviewed in detail in the sections below.

Under the *Public Lands Act*, the Cabinet may make regulations authorizing and governing dispositions (which by definition include leases and licenses) of Crown land (s.8). The focus of this review will be miscellaneous leases under the *Public Lands Miscellaneous Lease Regulations*³¹ and licenses of occupation under the *License of Occupation Regulation*.³² They will be dealt with together in the following sections.

2. Public Land Dispositions - Administration

The Departments of Environmental Protection and Agriculture, Food and Rural Development share responsibility for administering the Act.

3. Public Land Dispositions - Purpose of the Designation

There are no stated purposes in the Act and regulations for licenses of occupation and miscellaneous leases.

4. Public Land Dispositions - Designation Process

Both licenses of occupation and miscellaneous leases are issued by the Minister following the submission of an application. The details of the application process and information requirements are found in s. 3 of the *License of Occupation Regulation* and s. 4 of the *Public Lands Miscellaneous Lease Regulations*.

5. Public Land Dispositions - Permitted and Prohibited Uses

There are limitations on what can be done on any public land which should be mentioned in this discussion. Specifically, the Act prohibits the following activities (s.51(1)):

- accumulation of waste material, debris, refuse or garbage

- existence of any structure or excavation considered undesirable
- existence of any condition which could cause danger by fire to life, property or forest growth
- engaging in any act that could injuriously affect watershed capacity
- disturbance of any public land in a manner causing injury to the bed or shore of any water body or land in the vicinity of that public land
- creation of a condition likely to result in soil erosion

Moreover, with respect to dispositions, the Act prohibits the holder of the disposition from injuring or destroying the surface of the public land in the disposition without the authorization of the Minister or unless he is authorized in the disposition itself (s.50).

In addition, the applicable regulations prescribe specific permitted uses and prohibitions. Respecting licenses of occupation, the *License of Occupation Regulation* permits a licensee to remove fill material from a borrow pit on land adjoining his licensed area if the consent of listed parties is obtained and a plan provided and an amount paid to Minister for any timber destruction or surface damage (s.10). Further, the regulation authorizes a licensee to construct a road or right-of-way for his own use and requirements, subject to any conditions in the license (s.16). Any such road must be properly maintained and equipped with locks (s.17(a),(b)). However, the licensee must permit any person to travel without charge along or across the road by foot or in a vehicle, subject to certain exceptions where the road is closed by the Minister and where the user is a "commercial user", where specific requirements are set out (ss 17(c), 18, 19). A licensee is also required by the regulation to reclaim the surface of the licensed area in a manner satisfactory to the Minister (s.14) and is prohibited from erecting buildings or improvements in the licensed area other than those authorized in the license (s.15).

The only limitation in the *Public Lands Miscellaneous Lease Regulations* respecting miscellaneous leases relevant to this discussion is found in s. 8 which prohibits a lessee from constructing any improvements other than those specifically mentioned in the lease.

As well, it must be noted that the Minister, in s. 14 of the Act, is authorized to prescribe terms and conditions to any disposition made under the Act. Accordingly, each license of occupation and miscellaneous lease will contain additional prohibitions in the license or lease document.

6. Public Land Dispositions - Public Involvement

There are no provisions in the Act or regulations regarding the involvement of the general public in the matter of dispositions.

7. Public Land Dispositions - Management Plans

There is no reference in the Act or regulations to management plans for licenses of occupation and miscellaneous leases.

8. Public Land Dispositions - Enforcement

Relevant offences under the *Public Lands Act* are these:

- removing any property belonging to the government from public land without authority (s.53(a))
- destroying, defacing or removing a notice posted under the authority of the Act, without lawful authority (s.53(b))
- contravening ss 50 or 51 (set out above in "permitted and prohibited uses") (s.53(c))

- hindering, obstructing or impeding an officer in the performance of his duty under the Act (s.54)

Anyone convicted under the Act or regulations of an offence for which no penalty is provided is liable to a fine not exceeding \$1,000 and in default, imprisonment for a term not exceeding 90 days (s. 56).

9. Public Land Dispositions - Extent of Designation

As of March 31, 1995, there were 21,087 licenses of occupation and 1,444 miscellaneous leases granted in Alberta.

M Conclusions

Anyone reading the foregoing will quickly and easily reach the conclusion that Alberta has many existing legal mechanisms which could be used to designate land to meet all or some of the objectives in the Special Places 2000 policy. When agreement is reached on the need to designate a new protected area, it is more than likely that a legal mechanism will be found in this collection of legal mechanisms which will at least approximate what is required to give legal effect to the choice of designation. For example, areas requiring strong protection could be designated as wilderness areas or ecological reserves; areas designated for recreational use could be provincial parks; and so on.

What is apparent is that existing legal mechanisms are something of a hodgepodge of laws, regulations and practices that were enacted to meet a need, but are uncoordinated and fall short of modern standards for environmental legislation. What follows are some general observations on the state of existing legislation that could be used to support Alberta's Special Places initiatives.

Clearly, there is no overall philosophy underlying the existing legislation described earlier in this part. What we now have is an extremely pragmatic legislative regime where we can only surmise that legislative provisions were put in place to deal with the issues and facts of the time. What is most frustrating is the difficulty in finding an answer to such an obvious question as which legal mechanism offers the greatest protection - is it wilderness areas, ecological reserves or provincial historic areas which provide for tremendous flexibility. Current legislation is difficult to read and understand.

Most legal mechanisms have either no stated purpose or a purpose that is difficult to implement. For example, the Preamble to the *Wilderness Areas, Ecological Reserves and Natural Areas Act*, quoted earlier in this part, is so vague that it must give its administrators little concrete direction. This general lack of clarity in the purpose of designations, then follows through to the subsequent provisions describing what is allowed and not allowed in the designated area. If one is unclear as to why an area is being designated, then it is very difficult to choose the activities that are consistent with the objective of the area.

In a technical legal sense, there is a wide disparity between the legal rules applicable to existing designated areas. For example, even the process for designation varies from an act of the Legislature, to a regulation, to an order, to the Willmore Wilderness Area which has its own discrete act. With respect to the matter of enforcement, the provisions vary widely with some having no enforcement provisions to others such as the *Historical Resources Act* having very strong enforcement provisions. In any event, none have modern enforcement provisions such as are found in the Alberta *Environmental Protection and Enhancement Act*.

Given strong public interest in the government's Special Places 2000 initiative, there will be a continuing expectation of public involvement in establishing and managing designated areas. Few existing legal mechanisms provide for public

involvement of any sort, and none would match the provisions of the *Environmental Protection and Enhancement Act* or Bill 51, *The Water Act*.

Accordingly, while the government has many options through existing legislation to give effect to the Special Places 2000 initiative, there are clearly compelling reasons for a fresh look at the legislation needed to implement designated sites.

ENDNOTES

1. R.S.A. 1980, c. W-8.
2. Readers of legislation often question the importance of a preamble. A preamble is an optional part of legislation, but it is most often relied on to reveal legislative purpose, R. Sullivan, *Dreidger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) at 259. See also s. 12(1) of the *Interpretation Act*, R.S.A. 1980, c. I-7.
3. See *ibid.*, Sullivan at 279.
4. See Alberta, *Tenth Annual Report of the Advisory committee on Wilderness Areas and Ecological Reserves, April 1, 1992 to March 31, 1993* (Edmonton: Alberta Environmental Protection, 1993) (Chair: D. Chabillon) at 15.
5. Alberta, *White Goat and Siffleur Wilderness Areas Management Plan* (Rimbey: Alberta Provincial Parks Service, July, 1992) at 1.
6. *Ibid.*, at 10.
7. Alberta, *Kootenay Plains Ecological Reserve Draft Management Plan* (Rimbey: Alberta Provincial Parks Service, July, 1992) at 1.
8. For example, in the Advisory Committee's Tenth Annual Report, *supra*, note 4, two of its three recommendations deal with ecological reserves; in *Sixth Annual Report of the Advisory Committee on Wilderness Areas and Ecological Reserves, April 1, 1988 to March 31, 1989* (Edmonton: Alberta Recreation and Parks, 1989) (Chair: D. Cline), all recommendations relate to ecological reserves.
9. Alberta, *Alberta's Natural Areas: A Guide to Selected Sites* (Edmonton: Alberta Forestry, Lands and Wildlife, 1991) at 2.
10. Alta. Reg. 265/78.
11. Alta. Reg. 78/85.
12. *Natural and Protected Areas Information Paper No. 3*, September, 1991, at 1.
13. Alberta Forestry, Lands and Wildlife, October 1990.
14. R.S.A. 1980, c. P-22.

15. Alta. Reg. 346/83.
16. Alta. Reg. 346/83.
17. Alta. Reg. 102/85.
18. Alta. Reg. 213/92.
19. Alta. Reg. 37/94.
20. R.S.A. 1980, c. W-10.
21. Bill 43.
22. Alta. Reg. 197/76.
23. S.A. 1984, c. 9.1
24. Alta. Reg. 50/87.
25. Alta. Reg. 95/87.
26. R.S.A. 1980, c. F-16.
27. Alta. Reg. 343/79.
28. The relevant sections of the *Forest Recreation Regulation* are ss 2, 3, 4, 5, 5.1, 5.2, 5.3, 5.4, 5.5, and 5.6.
29. R.S.A. 1980, c. H-8.
30. R.S.A. 1980, c. P-30.
31. Alta. Reg. 376/61.
32. Alta. Reg. 448/81.

III. INVENTORY OF DISPOSITIONS

A *Introduction: Dispositions and the Special Places 2000: Alberta's Natural Heritage, Policy and Implementation Plan*

The Special Places 2000: Alberta's Natural Heritage, Policy and Implementation Plan provides that:

...government will honour all commitments to tenure holders, utilizing the renewal processes.¹

In a most significant sense, legislation, here meaning statutes and regulations, sets out government's fundamental commitments to disposition holders relating to public lands. Legislation establishes the perimeters of Crown dispositions. It speaks to holder's rights and limitations on those rights. It addresses how government retains certain power and authority. It can shed light on to what extent a disposition may be consistent with a Special Places designation. Legislation sometimes deals with government's power to alter or cancel dispositions and indicates whether and when the relevant Minister should consider government paying compensation.

This part of our report provides an alphabetical inventory of many dispositions that a Minister may grant in respect of public land. We use the term "disposition" in a broad sense, as defined in the *Public Lands Act*, (s.1(e)) to include any estate or interest in land of the Crown or any other right or privilege in respect of land of the Crown that is not an estate or interest in land. The inventory includes dispositions under the *Forests Act*² the *Public Lands Act*,³ the *Mines and Minerals Act*,⁴ the *Provincial Parks Act*⁵ and the *Wildlife Act*.⁶

In this part we inventory each disposition in respect of a number of categories. The following section describes each category and indicates why we use it in the inventory.

B *Inventory Categories*

Name of Disposition

This category gives the name of a disposition that may be granted or conveyed in respect of public land.

Legislative Authority

This category provides the legislative authority for the disposition. In particular, this category identifies regulations relevant to the disposition.

Nature of Disposition

This category briefly describes the disposition.

Rights and Limitations

This category briefly describes rights and limitations which might be relevant to an actual or potential Special Places designation. The information under the category is not exhaustive, and each disposition will in law be subject to additional limitations and will enjoy additional rights.

Access or Other Uses

This category briefly indicates to what extent the *legislation itself* contains *specific provisions* regarding access to the public land under disposition and provisions regarding other uses of the public land. This category is crucial to Special Places as it is a **first step** towards determining whether Special Place designation is compatible with the disposition. Text under this category will not discuss or draw any conclusions regarding access or other uses not specifically provided for in legislation. In our view, in due course, it will be necessary to go beyond this first step and reasonably and defensibly interpret the legislation to determine the extent to which the disposition allows, or is subject to, uses and access rights compatible with Special Place designation.

Term, Cancellation, Compensation

This category describes specific statutory and regulatory provisions regarding expiry terms of the disposition under discussion, whether the disposition may be renewed and whether the relevant Minister has a discretion to renew. As well, the category describes powers of the relevant Minister to cancel the disposition and relates provisions, if any, on compensation payable on cancellation.

In reading the text under this category it is important to keep in mind that, whether or not a specific regulation states it, the Minister may cancel any *Public Lands Act* disposition under s.25 of the *Public Lands Act*. This section would cover, for example, easements, grazing leases and permits, recreational and miscellaneous licenses, mineral surface leases, and all other *Public Lands Act* dispositions. The section provides that the Minister may cancel a disposition when: the holder fails to comply with the Act, regulations, the disposition, or a notice under the Act; the holder acquires the disposition in error or through fraud, misrepresentation or improvidence; the holder is convicted of an offence under the Act or regulations relating to the disposition; the holder requests that the disposition be cancelled; or to correct clerical errors (*Public Lands Act*, s.25). The Act contains no provisions for compensation in respect of cancellation under s.25.

S.25 is not repeated under individual inventoried dispositions.

C Notes Regarding Inventory

1. Section references

All references to sections of legislation are to the regulation under discussion unless otherwise indicated.

2. The word "Minister"

Because it is not usually apparent from the legislation, we have not specified which particular Minister the word "Minister" refers to in respect of any given disposition. However, with dispositions regarding green area public land typically the relevant Minister will be the Minister of Environmental Protection. With white area public land the Minister be either (or sometimes both of) the Minister of Agriculture, Food and Rural Development or the Minister of Environmental Protection. Special Areas are administered by the Minister of Municipal Affairs. Provincial Parks are administered by the Minister of Environmental Protection.

D Alphabetic Inventory of Dispositions

1. Exploration Approvals, Licenses and Permits

Legislative Authority

These dispositions may be issued under the *Forests Act, Mines and Minerals Act, Public Highways Development Act, Public Lands Act, Exploration Regulation*.⁷

Nature of Dispositions

Each of these dispositions deals with the exploration of mines and minerals on public land, except for metallic and industrial minerals as defined in the *Metallic and Industrial Minerals Regulation*,⁸ or ammonite shell, as defined in the *Ammonite Shell Regulation*.⁹ Neither the *Public Lands Act* nor the *Exploration Regulation* defines "mines and minerals", however the *Mines and Minerals Act*¹⁰ defines these terms as follows:

"mine" means any opening or excavation in, or working of, the surface or subsurface for the purpose of working, recovering, opening up or proving any mineral or mineral-bearing substance, and includes works and machinery at or below the surface belonging to or used in connection with the mine

"minerals" means all naturally occurring minerals, and without restricting the generality of the foregoing, includes

(i) gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sand, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl

...

An **exploration license** means a licence to conduct exploration (s.1(m)). An **exploration permit** means a permit to operate exploration equipment (s.1(n)). An **exploration approval** means an approval of a preliminary plan for the purpose of exploration (1(l)). Within 60 days of commencing exploration operations, the holder must submit a final plan for exploration (s.19). **"Exploration"** means any operations on or over land to determine geologic conditions underlying the surface of land or water, and any other operations preparatory to or connected with such operations which have the potential to cause surface disturbance, unless exempted by the Minister (s.1(k)).

Rights and Limitations

To conduct exploration a person needs the approval of the Minister and all occupiers of public land. The regulation defines **"occupied public land"** to mean public land subject to a disposition under the *Public Lands Act* or the *Special Areas Act* which conveys an interest sufficient for the holder to exclude entry (s.1(x)).

The **exploration approval, permit or license** authorize the holder to use the land in accordance with the disposition. These dispositions will authorize the manner and

path of exploration, type of equipment which may be used, uses by the holder that may be made of the land in connection with the exploration and duties of holder in respect of disposition.

The regulation contains many provisions governing a holder's obligations relating to potential damage to public lands or the environment, including damage to survey monuments, release of gas, subsidence and contamination of water (ss 33, 34, 35 & 38). As well, the regulation contains limitations and obligations regarding cut lines, timber salvage, vegetation and clean up (ss 40-42).

Access or Other Uses

The regulation contains no specific provisions under this category, however, it contemplates that exploration operations will occur on land on which other uses occur and which is subject to other dispositions.

Term, Cancellation, Compensation

An exploration approval on the date specified in the approval, or if the approval specifies no expiration date, then the next April 30th following the fiscal year in which the approval was granted.

The regulation contains no specific provisions regarding cancellation or compensation.

2. Forest Grazing Licenses

Legislative Authority

Forest grazing licenses are issued under the authority of the *Public Lands Act*, *The Forest Grazing License Regulations*.¹¹

Nature of Disposition

A forest grazing license gives the licensee the exclusive right to pasture livestock on land subject of the license (s.8).

Rights and Limitations

A forest grazing license conveys no general interest in the land (s.8(1)). Public land subject to a license pertaining to land under a forest management agreement remains part of the forest management area (s.9). A licensee must exercise rights with due regard for other authorized users of the land (s.8(2)); confine livestock to licensed area (s.11(1)); fence the area on the direction of the Minister (s.11(2)); graze in accordance with proper range management principles and conservation practices and must comply with the directions of an officer of the Department (s.17).

A licensee may not break, clear, cultivate or use herbicides without the Minister's consent (19) or have a permanent residence in the licensed area (s.13).

Access or Other Uses

A Minister may authorize other uses of the licensed area (s.23).

The licensee shall plan and manage grazing to accommodate other uses and

avoid damage to stands of young spruce and pine (s.11(3)).

Term, Cancellation, Compensation

A license may be issued up to 10 years (s.3(2)).

The licensee may not claim compensation from the Minister or the other user for either entry, use or loss of grazing capacity due to entry or use (s.23). However, nothing in s.23 limits licensee's right to compensation for loss to personal property or improvements.

The Minister may cancel a license issued in error (s.6(4)) and may refund moneys in full or part (s.6 (5)).

3. Forest Management Agreements

Legislative Authority

The Crown in right of Alberta owns all timber rights on public land and may dispose of these rights in accordance with the legislation. Forest Management Agreements ("FMAs") are issued under the *Forests Act* and the *Timber Management Regulation*.¹²

Nature of Disposition

An FMA enables the holder to "enter onto forest land for the purpose of establishing, growing and harvesting timber in a manner designed to provide a perpetual sustained yield" (*Forest Act*, s.16). FMAs cover large tracts of public land, the largest being 22,746 square miles.¹³ FMAs require holders to construct and operate industries using timber products, for example pulp and paper mills. The holder

utilizes the timber from the FMA area in the pulp and paper industries.

Rights and Limitations

Like all forestry dispositions, FMAs are subject to the *Forests Act* and regulations. FMAs also are subject to Operating Ground Rules developed by the holder and government. As well FMA holders must submit and follow numerous plans required by the legislation, FMA or Ground Rules. These plans typically include a Preliminary Forest Management Plan (12 months before commencement of forestry operations) containing a preliminary estimate of sustainable annual allowable cut¹⁴; a Detailed Forest Management Plan (within 3 years); an Annual Operating Plan for each operating year mapping out reforestation, forest protection, road construction, a five year projection for harvest, and harvest plans and forest protection plans.

FMAs set out rights and limitations governing the disposition. For example, among numerous other rights and limitations, the Al-Pac FMA gives the holder the right to "enter and occupy the forest management area" for certain purposes including to grow and establish timber, reforest, and construct necessary installations (clause 7).

Access or Other Uses

FMAs typically set out particular access rights. For example, the Al-Pac FMA states that the primary use of the land is for growing, harvesting and establishing timber, but that the Government's multiple use policy shall apply, and that the Minister reserves: the rights of others to travel, hunt, fish and use the lands for recreation; the right to authorize geological or geophysical exploration; the right to maintain and enhance fish and wildlife resources; the right to authorize trapping and grazing; and the right to authorize certain other timber dispositions (clause 8).

Term, Cancellation, Compensation

Neither the *Forests Act* nor the regulations set out a term for FMAs. However all FMAs in existence carry a 20 year term, renewable at the discretion of government for a further 20 years.¹⁵

FMAs enable the Minister to withdraw land from the FMA for certain purposes. Specifics regarding the authority vary from FMA to FMA. Rights of the holder for Crown withdrawals also vary throughout FMAs.¹⁶

4. Grazing Leases

Legislative Authority

Grazing leases are issued under the *Public Lands Act* (the "PLA"), and the *Public Lands Act Grazing Lease Regulations*.¹⁷

Nature of Disposition

Part 4 of the *Public Lands Act* enables the Minister to lease an area of public land, no larger than sufficient to graze 600 head of cattle for a term not exceeding 20 years, when, in the Minister's opinion, the "best use that may be made of that land is the grazing of livestock" (*Public Lands Act*, s.106).

Rights and Limitations

S.112(c) of the *Public Lands Act* authorizes cabinet to make grazing lease regulations "prescribing the rights and obligations of grazing lessees in relation to the use and occupation of the land held by them under grazing leases". A lessee may not plough, break or cultivate leasehold land without the Minister's written consent or

without a cultivation permit, for which the lessee may pay a rent additional to the rent paid to graze livestock (*Grazing Lease Regulations*, s.11).

A lessee may construct barns, shelters and corrals required for the care of livestock (*Grazing Lease Regulations*, s.17). A lessee may cut three tons of hay for each head of stock authorized, exclusively for the feeding of the lessee's livestock, and if the lessee requires more, the lessee must apply to the Minister for permission (*Grazing Lease Regulations*, s.18).

Access or Other Uses

The Minister may issue a timber permit authorizing entry onto grazing land to cut and remove timber on such terms and conditions the Minister considers necessary to protect the grazing lessees's interest (*Grazing Lease Regulations*, s.20). Where a lessee consents, the holder of a fur management licence pursuant to the *Wildlife Act* may enter leased grazing land for the purpose of taking fur-bearing animals. If the lessee refuses permission, the Minister may grant the entry right subject to such terms and conditions he considers necessary to protect the lessee's interests (*Grazing Lease Regulations*, s.20).

Term, Cancellation, Compensation

The Minister may issue a grazing lease for a maximum of 20 years (*Public Lands Act*, s.106).

On one year's notice, the Minister may, without compensation, reduce the area of a pre-1959 grazing lease to an area sufficient to graze up to 1000 head of livestock for a year, and may reduce the area of a post 1959 grazing lease to an area sufficient to graze up to 600 head of livestock for a year (*Public Lands Act*, s.113).

If the Minister refuses consent to an assignment of a grazing lease, the Minister may, on one year's notice, cancel the lease or withdraw any land from the lease (s.114).

5. Grazing Permits

Legislative Authority

Grazing permits in respect of white area public lands, other than areas under the *Special Areas Act* (see *Special Areas Grazing Permits*) are issued under the *Public Lands Act Grazing Permit Regulations*.¹⁸

Nature of Dispositions

The *Grazing Permit Regulations* authorize short-term grazing on lands under reservation for a different purpose, or where it is in the public interest not to grant a long term interest, as in a grazing lease. A grazing permit gives the holder the exclusive right to graze a specified area of public land.

Rights and Limitations

Grazing permits grant the holder exclusive right to enter and use the land for the purpose of grazing livestock and give the holder the right to enclose the land (s.9). A permittee must not plough, break or cultivate the land except for the purpose of seeding to forage or to destroy weeds, as may be authorized by the government (s.12). At the request of government, the permittee shall adjust stocking rate to achieve a stocking rate established by the Minister based on carrying capacity of the land (s.14).

Access or Other Uses

A permit is subject to the Minister's right to dispose of the land or any portion of it at any time during the currency of the permit by any means without the permittee's consent (s.17).

Term, Cancellation, Compensation

All permits expire the December 31st following the date of issue (s.6). If an area is withdrawn from the permit, the permittee is entitled to a proportionate rental adjustment (s.17).

6. Hay Permits

Legislative Authority

Hay permits are issued under the *Hay Permit Regulations*.¹⁹

Nature of Disposition

The regulation authorizes the Minister to issue hay permits authorizing the cutting of hay on public lands set out in the permit (s.1).

Rights and Limitations

An applicant for a hay permit for the applicant's own stock is limited to three tons of hay (s.2(s)).

Access or Other Uses

Notwithstanding a hay permit, the Minister may make any other disposition of the land to which the permit relates, provided that the disposition is subject to the permit (s.6).

A hay permittee unable to cut hay may apply for a refund (s.5).

Term, Cancellation, Compensation

Hay permits expire on October 31 of the year of issue (s.3).

7. Head Tax Grazing Permits

Legislative Authority

Head tax grazing permits are authorized under the *Public Lands Act Head Tax Grazing Permit Regulations*.²⁰

Nature of Disposition

The *Head Tax Grazing Permit Regulations* authorize permits for pasturing cattle on unoccupied Crown land and on community public land grazing reserves (s.3).

Rights and Limitations

Nothing specific and relevant to Special Places in regulation.

Access or Other Uses

Since head tax grazing permits are meant to be exercised on community reserves, the permits do not grant exclusive use. The Minister administers 32 community public land grazing reserves in Alberta²¹ to provide affordable summer pasture for local, small scale livestock operators while achieving what Government has called "optimum" multiple use.²²

Term, Cancellation, Compensation

A permit may be issued up to 1 year (s.3).

8. License of Occupation

Legislative Authority

Licenses of occupation ("LOCs") are issued under the *License of Occupation Regulation, 1981*.²³

Nature of Disposition, Rights and Limitations

Under the regulation, a LOC gives the licensee the right to use an area of public land for the purpose stated in the license. Subject to ss 17-23 of the regulation (discussed below), the license must be for the sole use and benefit of the licensee. Ss 17-23 deal with LOCs issued in respect of roads.

Although capable of broader application,²⁴ most LOCs relate to roads such as roads to access oil and gas or forestry operations on public land. S.17 of the regulation requires the licensee to permit, without charge, non-commercial travel, by foot or vehicle, on any LOC road. S.18 entitles the Minister, with the licensee's

consent to close a road to all but the licensee and permitted commercial vehicles.

Licensees may not erect any buildings or improvements on the licensed area other than those specified in the license (s.15). Licensees must reclaim the surface at the request of the Minister (s.14).

By the end or abandonment of operations, lessees must restore land to the satisfaction of the Minister, to the same condition as it was at the time of original lease application.

Term, Cancellation, Compensation

S.8 enables the Minister to withdraw any part of the licensed area, which event entitles the licensee to a proportionate reduction of the annual charge.

S.9 states that a licensee is not entitled to compensation for withdrawal or termination of a LOC or for any other reason.

9. Metallic and Industrial Minerals Exploration Permits and Licenses

Legislative Authority

Metallic and industrial minerals exploration permits and licenses are issued under the authority of the *Metallic and Industrial Minerals Exploration Regulation*.²⁵ This regulation was made under the *Forests Act*, *Mines and Minerals Act* and *Public Lands Act*.

Nature of Disposition

The regulation enables the holders of metallic and industrial mineral rights to apply for, and the Minister to issue exploration licenses to conduct explorations for

metallic or industrial minerals on public land, and to issue exploration permits to operate exploration equipment. "Metallic and industrial minerals" means those defined in the *Metallic and Industrial Minerals Regulation*.²⁶

Rights and Limitations

A licensee, or those authorized under the licensee, may conduct explorations on public land in accordance with the exploration approval (ss 15 and 19). An "exploration approval" is an approval issued by the Minister of a preliminary plan for a program of exploration (s.1(1)(g)). The preliminary plan must be in accordance with the regulations and approved by the Minister (ss 6 -9). The licensee must submit a final plan in accordance with the regulations within 60 days of completion of exploration under an approved exploration program (ss 37 and 38).

The Minister may require a security deposit before or after the approval is issued (ss 10 and 11). The deposit may be forfeited (in whole or part) if the Minister is of the opinion that the exploration program is not in compliance with the regulations or the approval, or the land has been damaged or adversely affected by the program (ss 12 and 13).

The licensee must reclaim the land and obtain a reclamation certificate (s.35).

The regulations contain a number of obligations relating to potential damage including in relation to survey monuments (s.29), release of fluids (s.30), subsidence (s.31) and contamination of water (s.33).

Access or Other Uses

No specific mention of right of access for other uses, although the regulation assumes that the land may be "occupied public land". For the purposes of the

regulation, "occupied public land" means public land that is the subject of a disposition under the *Public Lands Act*, the *Special Areas Act* or any other enactment that conveys an estate or interest sufficient to enable the holder of the disposition to exclude persons from entering the land.

Term, Cancellation, Compensation

An exploration approval expires at the earliest on the expiry date specified in the approval; if no expiry date is specified, the next April 30 following the fiscal year in which the approval was granted; or the date exploration is completed (s.16).

The regulation contains no specific provisions relating to cancellation or compensation.

10. Mineral Surface Lease

Legislative Authority

Mineral surface leases ("MSLs") are issued under the *Mineral Surface Lease Regulations*²⁷ under the *Public Lands Act*.

Nature of Disposition

The MSL regulation authorizes the Minister to issue leases of public land "to mineral producers who require public lands for the purposes in connection with or incidental to the recovery and production of mines and minerals" (s.3). Neither the *Public Lands Act* nor the MSL regulations define "mines and minerals", however the *Mines and Minerals Act*²⁸ defines these terms as follows:

"mine" means any opening or excavation in, or working of, the surface or subsurface for the purpose of working, recovering, opening up or

proving any mineral or mineral-bearing substance, and includes works and machinery at or below the surface belonging to or used in connection with the mine

"minerals" means all naturally occurring minerals, and without restricting the generality of the foregoing, includes

(i) gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sand, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl

...

Rights and Limitations

The lessee may erect structures and install equipment necessary for the purposes for which the lease is granted (s.17). After obtaining requisite consents the lessee may take fill material from adjacent land for which no disposition has been granted under the *Public Lands Act* or *Forests Act*. The Lessee may sell trees or timber cut in leased area (s.18).

The lessee may only use the leased lands for the purposes relating to recovery or production of mines and minerals, including purposes set forth by the Board of Arbitration in a right of entry order.

Term, Cancellation, Compensation

MSLs have a 25 year term, renewable at the sole option of the Minister. Instead of renewing a MSL, the Minister may issue a further 25 year lease (s.11).

The Minister may cancel a lease issued in error (s.9), where lessee requests it, where lessee defaults, or fails to comply with specified provisions relating to the

Forests Act;²⁹ acquires lease by fraud or misrepresentation; permits unauthorized persons to occupy leased area; abandons leased area or ceases to use it for leased purposes; makes an assignment in bankruptcy; purports to assign without Minister's consent; loses right to work or produce mines or minerals for leased purposes.

Access or Use

Where leased area contains an access road, lessee shall permit, without charge, access at reasonable times by possessor of lands on both sides of road (s.19(1)).

Lessee must permit officers of Department to enter and use land. (s.19(3)).

11. Miscellaneous Leases

Legislative Authority

Miscellaneous leases are issued under the *Public Lands Act* *Public Lands Miscellaneous Lease Regulations*.³⁰

Nature of Disposition

The regulations authorize the Minister to grant leases for purposes not expressly provided for by the *Public Lands Act* or other regulations (s.3).

Rights and Limitations

The Minister may give a purchase option in connection with a lease granted after 1972, if the land is within a subdivision plan under the *Land Titles Act*.³¹

Access or Other Uses

Nothing specific mentioned in the regulations.

Term, Cancellation, Compensation

A lease may be granted up to 25 years and may be renewed on such terms and conditions as the Minister decides (s.3).

12. Miscellaneous Permits

Legislative Authority

Miscellaneous permits are issued under the *Public Lands Act Regulations Governing the Issue of Miscellaneous Permits on Public Lands*.³²

Nature of Disposition

Permits may be issued for building sites and other miscellaneous purposes (Interpretation section of regulation).

Rights and Limitations

Subject to the regulation a permit vests in the holder the exclusive right to use the land for the purposes authorized in the permit (s.5).

The permittee shall not make use of the land for any purpose other than as authorized in the permit and shall neither occupy nor make use of any buildings or other improvements which may be upon the land, without the consent of the Minister and then only upon such terms and conditions as may be prescribed (s.4).

Access or Other Uses

Nothing specific in regulation.

Term, Cancellation, Compensation

A permit shall not be granted for a period over 1 year (s.1(e)) and is renewable in the discretion of the Minister on such terms and conditions as the Minister prescribes (s.1(f)).

The Minister may withdraw any portion of the land under permit or dispose of land at any time (s.7). The regulation makes no provision for compensation in respect of such withdrawal. However, if the permit is cancelled, provided that the permittee is not indebted to the Crown, the permittee may remove improvements (s.7).

A permit may be cancelled if obtained by fraud or misrepresentation, and unless Minister directs otherwise, all payments made are forfeited and the permittee is not entitled to compensation (s.11).

13. Provincial Parks Dispositions

Legislative Authority

A number of types of dispositions may be issued in respect of land comprising a Provincial Park under the *Provincial Parks Act, 1974, Dispositions Regulations*.³³

Nature of Dispositions

The regulations authorize the Minister to grant dispositions including:

- **mineral surface dispositions** to search or survey for mines and minerals, to remove minerals in or under park land, to carry out mining or drilling operations, to lay pipe, to erect necessary structures or for any other purpose for which the Surface Rights Board under the *Surface Rights Act*³⁴ may grant entry (ss 27-28)
- **cultivation dispositions** to cultivate and sow harvest plants (ss 29-31)
- **hay dispositions** to cut hay (ss 32-34)
- **grazing dispositions** to graze cattle or horses (ss 35-41)
- **summer cabin dispositions** to construct or occupy a summer cabin (ss 42-46)
- **pipeline dispositions** to transmit any fluid or gaseous substance (ss 47-57)
- **sand and gravel dispositions** to remove sand and gravel (ss 58-65)
- **clay and marl dispositions** to remove clay and marl (ss 66-73)
- **utility dispositions** to transmit, deliver or furnish telephone, telegraph, water, heat, or power, other than by way of a pipeline disposition (ss 74-82)
- **other dispositions** meaning easements, rights of ways, licenses of occupation and miscellaneous permits not expressly provided for in the *Provincial Parks Act* or any other regulations (s.84).

Rights and Limitations

A holder must only use park land for purpose set out in disposition (s.8(g)) and must not do anything that: injures or destroys or is likely to injure or destroy the surface of park; may be a danger to life, health, safety, property or forest growth;

may be injurious to watershed, or the bed of any water body in the vicinity of the park; or that may result in soil erosion, or pollution of land, plant life, animal life, water or air, unless expressly, or by necessary implication authorized in the disposition (s.8).

Access or Other Uses

The Minister, the director and any park officer has unrestricted access to the park land subject to the disposition to inspect or to carry out or supervise any work made under a compliance order (s.14).

The regulation specifically provides that **pipeline dispositions, sand and gravel dispositions, clay and marl dispositions and utility dispositions** do not grant exclusive interest in a park (ss 52, 61, 69, 78 and 78).

Term, Cancellation, Compensation

The regulation prescribes terms for the following dispositions: **cultivation permits** expire the December 31 of year of issue (s.30); **sand and gravel dispositions** and **clay and marl dispositions** expire the November 30 of the year of issue, or on date completes removal in accordance with the disposition, which ever is earlier (ss 60 and 68). Otherwise the regulation does not prescribe terms.

A disposition may be renewed for a term to be determined by the Minister if the holder has complied with the regulations (s.15).

Where park land is required for some public purpose, the Minister may cancel a disposition after giving not less than 12 months notice (s.18).

The Minister may cancel a disposition on 30 days notice where: the holder fails to comply with the Act, the regulations, or the disposition or fails to pay any fee, rent or tax; the disposition was issued in error; the holder acquired the disposition through fraud, misrepresentation or impersonation; the holder requests that it be cancelled; the park land is not used for the purpose of the disposition, or for the holder's sole use or benefit (s.19(1)). Where a disposition is cancelled under s.19(1) all payments are forfeited and the holder is not entitled to compensation (s.19(2)).

14. Recreational Leases

Legislative Authority

Recreational leases may be issued under the *Public Lands Act* and the *Regulations Governing the Issue of Recreational Leases on Public Land*.³⁵

Nature of Disposition

The regulation enables the Minister to grant leases of up to 20 acres of vacant and available public land for recreational or exhibition purposes to a municipality, a duly constituted agricultural society or a society incorporated under the *Societies Act*.³⁶

Rights and Limitations

The lessee shall not cut or destroy any vegetation without written consent of the Minister (s.10). The lessee shall only make use of the land for the purpose for which the lease was granted (s.12). The lessee must only erect such buildings or improvements as specified in the lease (s.7).

Access or Other Uses

The regulations contains no specific provisions regarding access.

Term, Cancellation, Compensation

A recreational lease has a 21 year term, renewable for a further 21 years "on such terms and conditions as the Minister may prescribe at the time of granting the renewal" (s.3).

15. Rights of Way, other than for Oil and Gas Pipelines

Legislative Authority

Rights of way, other than oil and gas, are granted under the *Public Lands Act Order, Authorizing Issue of Easements for Rights of Way other than Oil and Gas Pipelines Regulation*.³⁷

Nature of Disposition

The regulation gives the Minister authority to grant easements over, across and upon public land other than for oil and gas production.

Rights and Limitations

The regulation provides that the Minister may grant the rights of way "on such terms and conditions and he may prescribe in the easements".

Access or Other Uses

Nothing specific mentioned in the regulation.

Term, Cancellation, Compensation

Nothing specific mentioned in the regulation.

16. Rural Electrification Easements

Legislative Authority

Rural electrification easements are granted under the *Public Lands Act Order, Authorizing Issue of Rural Electrification Easements Regulation*.³⁸

Nature of Disposition

The regulation gives the Minister authority to grant easements, without cost to Rural Electrification Associations over, across and upon public lands.

Rights and Limitations

The regulation provides that the Minister may grant the easements "on such terms and conditions and he may prescribe in the easements".

Access or Other Uses

Nothing specific mentioned in the regulation.

Term, Cancellation, Compensation

Nothing specific mentioned in the regulation.

17. Special Areas Grazing Leases

Legislative Authority

Special area grazing leases are issued under the *Special Areas Act, Public Lands Act Special Areas Grazing Lease Regulations*.³⁹

Nature of Disposition

Special areas are constituted under the *Special Areas Act*⁴⁰ and are administered by the Minister of Municipal Affairs. The *Special Areas Act* applies to a special area unless the Order constituting it specifies that certain provisions of the *Public Lands Act* applies to that area (*Special Areas Act*, s.3). The Minister may make any order regarding a special area that may be made under the *Public Lands Act* (*Special Areas Act*, s.5). Unless the Minister determines otherwise, the leased area shall not exceed an area sufficient to graze 600 head of livestock (s.21).

Rights and Limitations

A special areas grazing lessee must use the lands to graze in accordance with conservation and range management practices (s.8). A lessee must erect fences when required by the Special Areas Board (s.14) and may not plough, cultivate or break land, except with the consent of the Board in writing. The lessee may construct barns, shelters, corrals and other improvements required for the care of the livestock (s.17). The lessee may cut up to three tons of hay without charge but needs a permit to cut any more (s.17).

Access or Other Uses

The Minister may grant entry for exploration or search for sand, gravel oil or minerals, and the lessee is entitled only to compensation for actual damage as may be provided for under other statutes (s.20). The regulation contains no other specific provisions regarding access or other uses.

Term, Cancellation, Compensation

A grazing lease may have a term up to 20 years, which may be renewed by the Minister provided that the lessee applies during the last 5 years of a term (s.5(2)).

If a grazing lease exceeds an area sufficient to graze 600 head of livestock, the Minister may, without compensation, with one year notice, reduce the area to an area sufficient to graze only 600 head (s.21).

Nothing else specific in *Special Areas Act* or the regulation pertains to cancellation or compensation.

18. Special Areas Grazing Permits

Legislative Authority

Special Area grazing permits are issued under the *Special Areas Act, Public Lands Act Special Areas Grazing Permit Regulations*.⁴¹

Nature of Disposition

Special areas are constituted under the *Special Areas Act*⁴² and are administered by the Minister of Municipal Affairs. The *Special Areas Act* applies to

a special area unless the Order constituting it specifies that certain provisions of the *Public Lands Act* applies to that area (*Special Areas Act*, s.3). The Minister may make any order regarding a special area that may be made under the *Public Lands Act* (*Special Areas Act*, s.5).

Rights and Limitations

A special areas grazing permit gives the permittee the exclusive right to enter upon and use land for the purpose of grazing the permittee's own stock (s.9). A permittee must erect fences when required by the Minister (s.9) and may not plough, cultivate or break land, except for regrassing or to destroy weeds, and then only as directed by the Minister (s.12). Grazing permits typically pertain to dried up water bodies and will be granted to grazing lessees who wish to extend their right to graze to these areas.⁴³

Access or Other Uses

The Minister may dispose of the land, or any portion of it by sale, lease or any other manner without the consent of the permittee (s.17). The Minister may grant cultivation permits in respect of the grazing permit area, as well as the access for cultivation operations (s.18). If the Minister withdraws areas from the grazing permit the permittee is entitled to a rental refund in respect of withdrawn area (s.19).

The permit may be cancelled for non-compliance with regulations or if the permit was obtained by misrepresentation of any material facts, and if cancelled in either of these circumstances, unless the Minister otherwise directs, all of the permittee's payments to the Crown shall be forfeited and the permittee shall not be entitled to receive any compensation.

19. Surface Materials Lease

Legislative Authority

A surface materials lease is authorized under the *Public Lands Act Surface Materials Regulation*.⁴⁴

Nature of Disposition

A surface materials lease grants the right to an operator to occupy public land to remove surface material by surface excavation (s.1(b)). "Surface materials" means clay, marl, sand, gravel, silica sand, topsoil and peat (s.1(j)). "Operator" means any person in whose favour a lease (or license) is made or granted (s.1(f)).

Rights and Limitations

With governmental consent, the operator may sublease any portion of leased land for agricultural purposes (s.15). Operators must reclaim land to the satisfaction of the Minister (s.18); construct cattle fences as the Minister requires (s.19); shall not utilize land for any purpose other than stated in the lease (s.25).

Access or Other Uses

The Minister may order other persons to enter the land and remove surface materials described in the lease for roads or other public works and in some cases may pay compensation (s.17).

- **Term, Cancellation, Compensation**

A lease shall not be granted for a term greater than 25 years (s.12).

The Minister may cancel a lease if operator fails to comply with regulations or relevant legislation (s.23), or with a Ministerial order (s.20(4)).

20. Pipe Line Leases

Legislative Authority

Pipeline leases in respect of public land are granted under the *Public Lands Act, The Pipe Line Regulations*.⁴⁵

Nature of Dispositions

A "pipe line" means a pipe for the transmission of any fluid or gaseous substance (s.1(k)). An operator must obtain the requisite interests in land in order to construct or operate a pipe line through public land. A pipe line lease grants leases of public land to operators who require public lands as sites for the operation and maintenance of pipe line installations, and incidental equipment and structures (s.57). (*also see pipe line rights of way*).

Rights and Limitations

The lessee may erect pipe line installations and other structures in connection with pipe line installation, but no other buildings without the Minister's consent (s.51).

The lessee may sell cut timber from leased area (s.52).

Before the end of the lease, or upon abandonment, the lessee must reclaim the land (s.58).

Access or Other Uses

A lessee shall permit government entry (s.52).

Term, Cancellation, Compensation

A pipe line lease shall be for 25 years and is renewable at the sole option of the Minister (s.43).

A pipe line lease may be cancelled if the operator fails to comply with relevant laws, the lease was entered into in error or because of fraud or misrepresentation, or the operator purports to assign without the Minister's consent, permits unauthorized use of the lease, or ceases operation or to have authority to operate (s.31).

21. Pipe Line Rights Of Way

Legislative Authority

Pipeline rights of way in respect of public land are granted under the *Public Lands Act, The Pipe Line Regulations*.⁴⁶

Nature of Dispositions

A pipe line right of way gives the operator the requisite interest in respect of the area where the pipe is installed and operates. (*Also see pipe line leases*).

Rights and Limitations

An operator has an implied right of ingress or egress over public lands from the nearest road, where the operator requires an access right, but the operator must compensate the Minister and any occupant for damage (s.19).

An operator may only use the right of way for the purposes of constructing, operating and maintaining the pipe line and no other purpose (s.21).

Except where necessary, pipe lines must be buried and the land reclaimed within one year (s.29).

An operator may sell or dispose of timber cut on right of way (s.22).

An operator shall, when directed by the Minister, erect fences and cattleguards in respect of any above surface installations (s.23).

Access or Other Uses

A pipe line right of way agreement is by implication subject to an easement in favour of the Crown. Except for where pipe line installations are on or protrude onto the surface, the Minister may grant or continue *Public Lands Act* agricultural dispositions, road crossings and licenses of occupation (s.18).

Term, Cancellation, Compensation

A pipe line right of way continues until cancelled in accordance with the regulation (s.12). A pipe line right of way agreement may be cancelled if the operator fails to comply with relevant laws, the agreement was entered into in error or because of fraud or misrepresentation, or the operator fails to commence construction within

6 months, purports to assign without the Minister's consent, permits unauthorized use of the right of way, or ceases operation or to have authority to operate (s.31).

22. Registered Fur Management License

Legislative Authority

Registered fur management licenses are issued under the *Wildlife Act*,⁴⁷ *Wildlife Act, General Wildlife Regulations*⁴⁸ and the *General Wildlife (Ministerial) Regulation*.⁴⁹

Nature of Disposition

A registered fur management license gives the holder the right to hunt fur bearing animals in the public land registered fur management area to which the license relates, as well as on any private land of which the licensee is the owner or occupant. If the registered fur management area is north of the Red Deer River, a license may give the licensee the right to hunt up to 6 black bears, other than with traps (s.5).

Rights and Limitations

The regulations specify limitations regarding manner of hunting and who can hold a license.

Access or Other Uses

Nothing specific mentioned in regulation.

Term, Cancellation, Compensation

The initial term of a registered fur management license issued to a "senior holder" is 5 years. A "senior holder" means a person capable of providing the written consent of any other registered fur management licensee for the fur management area. At the expiration of the term, the Minister may extend the license for a further period not exceeding 5 years (*General Wildlife Regulation* s.5.1).

The term of a registered fur management license for a "partner" is one year. "Partner" means anyone who applies for a license other than a senior holder (*General Wildlife Regulation* s.5.1).

The Minister may cancel a registered fur management license if the fur management area is not being harvested to the Minister's satisfaction (*General Wildlife Regulation*, s.5(6)). The Minister may, in the public interest, cancel or suspend any license or permit under the Act (*Wildlife Act*, s.22).

23. Surface Materials License

Legislative Authority

A surface materials license is authorized under the *Public Lands Act Surface Materials Regulation*.⁵⁰

Nature of Disposition

A surface materials license grants to an operator the right to enter onto land for the purpose of removing surface materials, but grants no right in or possession to the land (s.4(a)).

Rights and Limitations

Operators must reclaim land to the satisfaction of the Minister (s.18); construct cattle fences as the Minister requires (s.19); shall not utilize land for any purpose other than stated in the license (s.25).

Access or Other Uses

As mentioned above, a license grants no right in or right of possession in the land (s.4(a)).

The Minister may order other persons to enter the land and remove surface materials described in the license for roads or other public works and in some cases may pay compensation (s.17).

Term, Cancellation, Compensation

A license shall not be granted for a term greater than one year (s.4). A licensee may reapply on expiration of term (s.6).

The Minister may cancel a license if operator fails to comply with regulations or relevant legislation (s.23), or with a Ministerial order (s.20(4)).

24. Timber Permits

Legislative Authority

The *Forest Act*⁵¹ and regulations authorize the disposition of timber rights by timber permits, timber quotas and licenses and forest management agreements.

Timber permits are authorized under the *Forests Act* and the *Forest Act Timber Management Regulation*.⁵²

Nature of Disposition

A timber permit authorizes the holder to harvest timber on public land in accordance with the permit and the legislation (*Forests Act* s.22). The regulation authorizes four types of timber permits: local timber permits, commercial timber permits and forest product tags and Christmas tree permits.

Local Timber Permits may be granted to cut up to the following amounts: 1500 cubic metres of green deciduous timber or dead or damaged timber; 750 cubic metres of green coniferous timber; any number of coniferous trees for Christmas trees not exceeding 10 metres in height; any number of coniferous trees not exceeding 10 metres in height for transplanting; any number of deciduous trees for transplanting up to 5 metres in height.

Commercial Timber Permits usually are granted for larger amounts than local timber permits. These permits usually are offered for sale by auction or sealed tender when there is a surplus annual allowable cut from a forest management unit. "Forest management units" are designated by the Minister and typically are 1500 square miles. "Annual allowable cut" means the total amount of timber that may be harvested in one year (s.1(a)).

Forest Products Tags enable the holder to cut for use on lands owned or controlled by that person or the person's family up to the following amounts: 20 trees for transplanting up to 2.5 metres high; 3 Christmas trees up to 2.5 metres high; 5 cubic metres of green coniferous timber; 10 stacked cubic metres of birch; 35 stacked cubic metres of deciduous timber other than birch; 35 stacked cubic metres of deal coniferous timber.

Christmas Tree Permits are issued by tag and enable the holder to harvest one tree under 2.5 metres high for personal use (s.69.1).

Rights and Limitations

A permit holder may harvest in accordance with the *Forests Act*, regulations and terms of the disposition. The timber remains the property of the Crown until cut. A permit gives the holder the right to enter the land for the purposes of carrying out or complying with the permit, and a right to compensation as against anyone except the Crown, who deprives the holder of the right to cut (*Forests Act*, s.28(4)).

Access or Other Uses

The permit confers no right to the land itself (*Forests Act*, s.28) and accordingly, at law, no property right to exclude access or other uses.

Term, Cancellation, Compensation

In practice, **Commercial Timber Permits** are issued for 1-3 years.⁵³ All **Local Timber Permits** expire April 30th, unless the permit otherwise specifies (s.50). **Forest Product Tags** are issued for 30 days (s.67).

The Minister may, in the public interest, change any provision of a permit or cancel the permit after 30 days notice (*Forests Act*, s.26). If the change or cancellation was not due to the fault of the holder, the Minister may pay compensation (*Forests Act*, s.27).

25. Timber Quotas, Quota Certificates and Licenses

Legislative Authority

The *Forests Act*⁵⁴ and regulations authorize the disposition of timber rights by timber permits, timber quotas and licenses and forest management agreements. Timber quotas and licenses are authorized under the *Forests Act* and the *Forest Act Timber Management Regulation*.⁵⁵

Nature of Disposition

A timber quota gives the holder a right as against anyone to a volume of timber specified in a timber quota certificate. A coniferous timber quota specifies the percentage volume of the annual allowable cut the quota holder may harvest in a forest management unit.⁵⁶ A deciduous timber quota allocates the volume or area of deciduous timber that the quota holder may harvest, (*Forests Act*, ss17(2), and (3)). A quota holder may not cut any trees until the Crown issues a timber license. The license will set out where in a forest management unit a holder may cut and contain other harvesting provisions (*Forests Act*, s.21).

Rights and Limitations

A quota holder must harvest in accordance with the *Forests Act*, regulations and terms of the quota certificate and license. The timber remains the property of the Crown until cut. A quota gives the holder the right to enter the land for the purposes of carrying out or complying with the quota and license. A licensee has a right to compensation as against anyone except the Crown, who deprives the holder of the right to cut (*Forests Act*, s.28(4)).

Access or Other Uses

The quota or license confers no right to the land itself (*Forests Act*, s.28), and accordingly, at law, no general right to exclude access or other uses.

Term, Cancellation, Compensation

Quotas may be granted for up to 20 years renewable in the discretion of the Minister (*Forests Act*, s.66). Timber licences are issued for five years, but must be exercised in accordance with annual operating plans (*Forests Act*, s.21).

The Minister may, in the public interest, change any provision of a timber quota or license, or cancel the quota or license after 30 days notice (*Forests Act*, s.26). If the change or cancellation was not due to the fault of the holder, the Minister may pay compensation (*Forests Act*, s.27).

ENDNOTES

1. *Special Places 2000: Alberta's Natural Heritage, Policy and Implementation Plan* (Environmental Protection, Edmonton, 1995) at 8.
2. R.S.A. c. F-16, s.16.
3. R.S.A. 1980, c. P-30.
4. R.S.A. 1980, c. M-15
5. R.S.A. 1980, c. P-22.
6. S.A. 1984, c. W-9.1.
7. Alta. Reg 32/90.
8. Alta. Reg. 66/93.
9. Alta. Reg. 59/89.
10. R.S.A. 1980, c. M-15, ss 1(k) and 1(m).
11. Alta. Reg. 309/71.
12. Alta. Reg. 297/87.
13. The Crestwood Forest Industries (Al-Pac) FMA.
14. "Annual allowable cut" means the total amount of timber that may be harvested in one year (*Timber Management Regulation*, Alta. Reg. 60/73, s.1(a)).
15. A. Moen, *Demystifying Forestry Law: An Alberta Analysis* (Edmonton: Environmental Law Centre, 1990) at 48. The Al-Pace FMA, entered into subsequent to this publication, also carries a 20 year, discretionary renewable term.
16. A. Moen (*Ibid* at 46-48) discusses compensation for withdrawals in respect of a number of FMAs in existence at publication, 1990.
17. Alta Reg. 432/66.
18. Alta Reg. 64/70.
19. Alta. Reg. 221/76.

20. Alta Reg. 482/63.
21. See Forestry, Lands and Wildlife, *Grazing Reserves, Southern* (1989) Pub. No.1/189 at 3.
22. *Alberta Public Lands* (Edmonton: Alberta Forestry, Lands and Wildlife, 1988) at 36.
23. Alta. Reg. 448/81.
24. For example, Ducks Unlimited have been granted LOCs in relation to wetland or lake waterfowl habitat projects.
25. Alta. Reg. 96/91.
26. Alta. Reg. 66/93.
27. Alta. Reg. 228/58.
28. R.S.A. 1980, c. M-15, ss 1(k) and 1(m).
29. Fails to comply with a forest protection order or fells or permits tress to remain on land not owned or controlled by the lessee.
30. Alta. Reg. 276/61.
31. R.S.A. 1980, c. L-5.
32. Alta. Reg. 269/57.
33. Alta. Reg. 241/77.
34. S.A. 1983, c. S-27.1.
35. Alta. Reg. 548/57.
36. R.S.A., c. S-18.
37. Alta. Reg. 550/57.
38. Alta. Reg. 549/57.
39. Alta. Reg. 96/68.
40. R.S.A. 1980, c. S-20.
41. Alta. Reg. 330/66.

42. R.S.A. 1980, c. S-20.
43. Telephone discussion with a representative of the Special Areas Board, December 20, 1995.
44. Alta. Reg. 11/78.
45. Alta. Reg. 246/58.
46. Alta. Reg. 246/58.
47. S.A. 1984, c. W-9.1.
48. Alta. Reg. 50/87.
49. Alta. Reg. 95/87.
50. Alta. Reg. 11/78.
51. R.S.A. c. F-16, s.22.
52. Alta. Reg. 60/73.
53. A. Moen, *supra* note 15 at 22.
54. R.S.A. c. F-16, s.22.
55. Alta. Reg. 60/73.
56. For the purposes of Crown forest management, the Province is divided into 4 regional centres. Alberta's forests are subdivided into forestry management units about 1500 square miles each. (See A. Moen, *supra* note 15 at 15).

IV. OTHER JURISDICTIONS - AN OVERVIEW

A *Introduction*

The purpose of this part is to provide a general description of the legislative and policy framework supporting land designation programs in other jurisdictions (notably other Canadian provinces and New Zealand) and to highlight relevant developments that may be of particular interest to Alberta.

B *Canada*

1. British Columbia

As in Alberta, there are numerous statutes and regulations providing for the conservation and protection of land. These are the:

- *Park Act*, R.S.B.C. 1979, c.309,
- *Park Amendment Act, 1995* (Bill 53, received third reading July 12, 1995),
- *Park and Recreation Area Regulation*, B.C. Reg. 180/90, O.C. 867/90,
- *Class C Parks Regulations*, B.C. Reg. 227/67, O.C. 2916/67,
- *Ecological Reserve Act*, R.S.B.C. 1979, c. 101,
- *Ecological Reserve Regulations*, B.C. Reg.335/75, O.C. 1456/75,
- *Park (Regional) Act*, R.S.B.C. 1979, c. 310, and
- *Environment and Land Use Act*, R.S.B.C. 1979, c. 110.

Amongst other things, this legislative package provides the basis for B.C.'s current protected areas strategy, as described in the 1993 policy document entitled *A Protected Areas Strategy for British Columbia: The Protected Areas Component of*

B.C.'s Land Use Strategy.

As described in that document, the target of the Protected Areas Strategy is to bring 12% of the province's land and freshwater or marine area within the protected areas system by the year 2000. Protected areas are inalienable (may not be sold, leased or otherwise disposed of) and may not be used for mining, logging, hydrodams or oil and gas development.

The goals of the Protected Areas Strategy are two-fold: (1) to protect viable, representative examples of natural diversity and (2) to protect the special natural, cultural heritage and recreational features of the province. While protection might be a goal pursued under other land use management programs (in addition to other goals; commercial or industrial activity for example) it is the **only** goal or purpose of the Protected Areas Strategy although social and economic factors will be considered as part of the designation process.

In addition to describing goals and the implementation system, the Protected Areas Strategy addresses the need for legislative amendment to incorporate these "principles":

- An integrated set of protected areas designations will be established to provide necessary flexibility.
- The protected areas legislation will recognize a wide spectrum of acceptable uses and benefits that flow from protected areas designation.
- Lands adjacent to protected areas will be managed in a compatible manner.
- Objectives will be developed and clearly expressed.
- Public accountability will be built in to ensure that both the designation and management of protected areas is in the public interest and undertaken as a trust for the future.

- The rights and entitlements of Aboriginal peoples will be specifically addressed.
- Pre-existing tenures will be acknowledged and accommodated within the objectives of the legislation; if not, compensation will be paid.
- Responsibility for the protection of natural, cultural heritage and recreational resources is to be shared between a number of agencies and sectors.

According to an official with the B.C. Ministry of Environment, Lands and Parks¹ existing legislation, piecemeal as it may be, is adequate to achieve all the objectives of the Protected Areas Strategy, largely because of the broad language of the *Park Act* itself.

Several interesting amendments were introduced by the *Park Amendment Act 1995*, including the addition of offence and penalty provisions. Section 32.1 of the *Park Act*, as amended now imposes a fine of up to \$1,000,000, up to one year of incarceration (or both) for violations of the Act and a maximum fine of \$200,000 for violations of regulations enacted pursuant to the Act.

2. Saskatchewan

Land designation for a variety of purposes is possible under six different statutes in Saskatchewan. These are the:

- *Regional Parks Act*, S.S. 1979, c. R-9.1,
- *Ecological Reserves Act*, S.S. 1979-80, c. E-O.O.1,
- *Parks Act*, S.S. 1986, c. P-1.1,
- *An Act Respecting the Sale or Lease of Certain Lands Belonging To Her Majesty The Queen*, R.S.S. 1978, c. S-8 and
- *Heritage Property Act*, S.S. 1979-80, c. H-2.2.

The first three statutes are of the greatest relevance to the purposes of this paper and will be briefly summarized here.

The purposes of the *Regional Parks Act* are to encourage the appreciation and the use of natural and recreational resources on a regional basis (s.3). The Act establishes regional park authorities which may acquire land suitable for a park and carry out some of the purposes of the Act (s.8) including making regulations regarding waste, vehicle use, protection and personal health and safety (s.9). The Act does not set out any specific restrictions on development or uses in a regional park. It does however, enable the Minister, with the approval of the Cabinet to enter into a maximum five year agreement with a regional authority regarding purposes, planning, management, maintenance and financial matters (s.10).

The *Ecological Reserves Act*, amongst other things, provides a definition for the term "ecological reserves" which means (s.2):

any [designated] Crown land ...which sustains or is associated with unique or representative parts of the natural environment.

The Act enables the Cabinet to designate any Crown land as an ecological reserve by regulation and thereby establish what activities may be conducted on it (s.4). The Act also prohibits (subject to the regulations) any transfer or granting of any ecological reserve or any interest or estates in an ecological reserve (s.7). Of particular interest is s.10 which stipulates that the Act is to take precedence over any other conflicting legislation.

The Department of Environmental and Resource Management has created selection guidelines for ecological reserves which require that candidate sites:

- be on provincial Crown land,
- not contain encumbrances inconsistent with ecological goals,
- be selected to first represent each of the province's major ecoregions, then be based on landscape areas within ecoregions,
- be selected to represent equitable provincial distribution,
- contain high levels of ecological diversity and unique ecological characteristics, and
- be sensitive to human disturbance.

Management guidelines are made for each reserve with the objective of keeping human influence to a minimum.

The *Parks Act* dedicates parkland to the people of and visitors to Saskatchewan for their education and enjoyment. It requires that the natural, prehistoric and historic resources of parks be maintained for future generations (s.3). Five categories of parkland are described by the Act:

- **historic parks** which are to be used primarily for the preservation and interpretation of prehistoric and historic resources,
- **recreation parks** which are to be used primarily for outdoor recreational activities,
- **natural environment parks**, to be used for the protection of natural landscapes in a natural state and for the pursuit of outdoor activities consistent with that primary objective,
- **wilderness parks**, to be used for the preservation of natural landscapes in a natural state and for the pursuit of outdoor activities consistent with that primary objective, and
- **protected areas**, to be used for the protection and preservation of natural, prehistoric or historic resources of interest or significance.

Although the Act prohibits any grants or transfers of any parkland (s.14) it gives the Minister considerable latitude to dispose of interests in parkland. Subject to the Act and regulations, the Minister may issue one year use and occupation authorizations, up to 21 year leases, easements or other authorizations, and with the approval of the Cabinet, leases, easements or other authorizations exceeding 21 years. The only disposition prohibition is that the Minister may not lease the 10 meters in width adjacent to any water in parkland (s.15).

The latitude given to the Minister to dispose of interests in parkland may be limited by the Cabinet through the enactment of regulations prescribing categories of zones within parkland and activities which will be prohibited within a zone (s.26).

The *Provincial Parks System Plan* (SPRR 190b) establishes long term planning for the various categories of parks. The Plan identifies zones within categories and establishes prohibited and permitted uses.

3. Manitoba

Manitoba is the first of the provinces to have enacted revised designated lands legislation. The *Provincial Parks and Consequential Amendments Act* (S.M. 1993, c.39) was enacted in 1993 but for the most part has not yet been proclaimed in force, pending the development of a system plan setting out proposed boundaries and land use categories for provincial parks.²

The preamble to the new Act refers to both sustainable development and preservation, specifically mentioning the goal of protecting 12% of Manitoba's natural regions. Its purposes include the conservation of ecosystems that maintain biodiversity, the preservation of unique and representative natural, cultural and heritage resources and the provision of outdoor recreational and educational opportunities and experiences (s.5).

Under the Act, parks would be designated by regulation and would be classified as either (s.7(2)):

- a wilderness park, if the main purpose is preservation of a representative area of a natural region,
- a natural park, if the main purpose is to preserve and to accommodate recreation and resource use,
- a recreation park, if the main purpose is to provide recreational opportunities,
- a heritage park, if the main purpose is to preserve heritage resources , or
- any other type of park as specified in regulations.

Regulations would further categorize the designated land in a park into one or more categories including:

- wilderness, if the main purpose is to protect unique undisturbed natural landscapes and to provide recreational activities which depend on a pristine environment,
- backcountry, if the main purpose is to protect examples of natural landscapes and provide basic facilities and trails for nature-oriented recreation in a largely undisturbed environment,
- resource management, if the main purpose is to permit development that does not compromise the purpose of the classification,
- recreational development, if the main purpose is to accommodate recreational opportunities,
- heritage, if the main purpose is to protect a unique or representative site containing a resource or resources of cultural or heritage value,
- access, if the main purpose is to provide a point or route of access in a provincial park, and
- any other category that may be specified by regulation.

The Act restricts uses in a wilderness park or any area in any park categorized as wilderness, backcountry or heritage by prohibiting logging, mining, oil, gas petroleum or hydro-electric power development in addition to any other activity specified by regulation.

Mandatory public consultation is another interesting and novel feature of the Act. Pursuant to ss 8 and 9, the public must be consulted about proposed regulations as a precondition to enactment.

Although management plans must be developed (s.11) there is no express stipulation that they be followed in every case.

Of interest too, is s. 17 which deals with restrictions upon owners and occupiers of protected land:

17(1) Except in accordance with the regulations no owner or occupier of land in a provincial park shall

- (a) construct...a building or excavation or other operation on, over or under the land; or
- (b) change the use or intensity of use of the land, a building or premises.

17(2) The application of subsection (1) to an owner or occupier of land in a provincial park shall not constitute loss or deprivation of property or a taking of property by the government for which compensation is payable.

Section 28 gives the Crown the right of action against anyone who wilfully or negligently destroys Crown property or land in a provincial park while s.31 prescribes the penalty for violations of the Act or regulations: \$10,000, incarceration for a maximum of six months, or both.

Once proclaimed, the Act will replace the existing *Provincial Park Lands Act* (R.S.M. 1987, c.P-20) but will neither repeal nor amend the *Ecological Reserves Act* (R.S.M. 1987, c.E-5).

That Act authorizes the Cabinet to establish and maintain a system of ecological reserves (s.2), the purposes of which include (s.3):

- the provision of opportunities for the study and research into the ecological features of the province,
- the provision of opportunities for the enjoyment of residents and visitors to Manitoba,
- the preservation in perpetuity of: (a) unique and rare examples of botanical, zoological and geological features, (b) examples of natural habitats or rare or endangered plants and animals that are native to Manitoba, (c) representative examples of natural ecosystems, and (d) representative examples of ecosystems that have been modified by man and that offer opportunities for the study and research of the recovery of the ecosystem from modification.

Section 8 prohibits the sale or transfer of land designated as an ecological reserve, unless the designation is first removed (s.8(3)). The removal of a designation can only occur after notice has been published in a newspaper of general circulation and, if considered necessary by the Minister, further consideration by a committee who will accept submissions from the public (s.8(3)).

4. Ontario

Land designation programs in Ontario are primarily based upon three statutes: the *Provincial Parks Act* (R.S.O. 1990, c.P-34), the *Public Lands Act* (R.S.O. 1990 c.P-43) and the *Wilderness Areas Act* (R.S.O. 1990 c.W-8).³

The *Provincial Parks Act* has a long history, having been consolidated into its present form in 1954. Since then there have been numerous amendments, most recently having to do with enforcement.⁴ The purpose of the Act is similar to that of other provincial parks legislation (s.2):

All provincial parks are dedicated to the people of the Province and others who may use them for their healthful enjoyment and education and... the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and the regulations.

The Act provides for the development of six classes of provincial parks ranging from wilderness (most protected) to recreation. Further classification can occur within a designated provincial park through a zoning process. There are six zones or classifications possible: wilderness, nature reserve, natural environment, historical, development and access.

Once an area has been designated as a park, management plans may be prepared and implemented in accordance with regulations.

Administration of the Act is guided by four policy objectives: protection, heritage appreciation, recreation and tourism.

The *Wilderness Areas Act* authorizes the Cabinet to set aside public lands as wilderness areas. The purposes of designation are set out in s.1 of the Act:

...for the preservation of the area as nearly as may be in its natural state in which research and educational activities may be carried on, for the protection of the flora and fauna, for the improvement of the area ... or for such other purposes as may be prescribed by the regulations.

Natural resources utilization or development is not prohibited in any wilderness area that is larger than 260 hectares (s.2).

The Act assigns wilderness areas to the jurisdiction of the Minister of Natural Resources who has the additional authority to take measures to protect fish, animals and birds within a wilderness area, despite the provisions of "...the *Game and Fish Act* and the regulations thereunder." (s.5).

The Minister of Natural Resources has the authority to set aside public lands for public parks and "...for any purpose that will benefit research in and the management, utilization and administration of, the public lands and forests," pursuant to ss 10 and 11 of the *Public Lands Act*.

5. Quebec

Like Ontario, the legislative basis for designated land programs in Quebec is fairly narrow. There are two categories of protected lands in Quebec: ecological reserves, established pursuant to *An Act Respecting Ecological Reserves*, (R.S.Q. 1977, c. R-26) and provincial parks created under the *Parks Act* (R.S.Q. 1977, c.59 as amended).

Section 2 of the former sets out the purpose of ecological reserves:

2. The Government may, by regulation, establish as an ecological reserve any territory composed of public lands if it considers that measure necessary:

- (a) to preserve such territory in its natural state;
- (b) to reserve such territory for scientific research and, if need be, or
- (c) to safeguard animal and plant species threatened with disappearance or extinction.

This description of the purpose of ecological reserves is consistent with similar legislation in the other provinces and there is little to distinguish this Act from others of that type.

Two types of parks may be established under the *Parks Act*: those for recreation and "conservation parks" (ss 2 and 3). As defined, conservation parks are primarily intended to ensure the permanent protection of representative examples of Quebec's natural regions or of sites of exceptional significance (s.1(c)). Notwithstanding this primary objective, conservation parks are to be accessible to the public for educational and recreational purposes.

6. New Brunswick

The principle vehicle for the designation and protection of land in New Brunswick is the *Ecological Reserves Act* (S.N.B., 1995, c.E-1.1) which is intended to be the base for a network of protected areas. Selection criteria for ecological reserves includes (in addition to the usual suitability for research and educational purposes) areas that "are examples respecting the recovery of a modified ecosystem."

Section 6 of the Act sets out a long list of activities prohibited on an ecological reserve. These are:

- hunting
- fishing
- trapping
- forestry
- agriculture
- mining operations, exploration or boring
- prospecting and
- construction.

Designations under the *Parks Act* are far more permissive with respect to permitted uses. This is the legislation used to establish and administer "provincial

parks" which is a term defined as (s.1(a)):

...any area of land established ...as a recreational park, campground park, beach park, wildlife park, picnic ground park, resource park, park reserve or any combination thereof.

Unlike the *Ecological Reserves Act*, this Act does not include a list of prohibited uses. Instead, ss 15 and 16 merely indicate that certain uses, like mining, hunting, fishing and cutting trees, may be prohibited.

7. Nova Scotia

In keeping with the other provinces, Nova Scotia does not have an umbrella statute dealing with designated lands. For the most part, protection and conservation objectives are pursued through the *Special Places Protection Act* ((R.S.N.S., c.438) and, to a lesser extent the *Provincial Parks Act* (R.S.N.S., c.367).

It is clear from the purpose sections of *Special Places Protection Act* that the primary objective of the legislation is to designate ecological sites for preservation and study. The equivalent of this statute in other provinces is ecological reserve legislation. Like Manitoba's new (as yet unproclaimed) *Provincial Parks Act*, the *Special Places Protection Act* lists one of the purposes of the Act as the designation of land that might (s.2(b)(iii)):

serve as examples of ecosystems that have been modified by man and offer an opportunity to study the natural recovery of ecosystems from such modifications,...

The designation process established under the Act has been criticized as being cumbersome, resulting in a backlog of candidate ecological reserves.

The primary objective of the *Provincial Parks Act* is the management of Crown land to maximize recreational opportunities. That said, various sections of the Act do refer to protection and conservation goals, including s.2(1)(b) which provides:

- 2(1) The purpose of this Act is to develop and operate provincial parks to ...
(b) preserve unique, rare, representative or otherwise significant elements of the natural environment and historic resources of Nova Scotia;

While reform of designated lands legislation has not been undertaken as yet, the provincial government recently released a policy document which addresses key issues. The document, entitled *Proposed Systems Plan for Parks and Protected Areas in Nova Scotia* was the basis for public review and commentary and once in place may well provide incentive, if not the actual blueprint, for legislative reform.

8. Newfoundland

The key statute for the protection of land in Newfoundland is the *Wilderness and Ecological Reserves Act* (R.S. Nfld., 1990, c. W-9). Two categories of protected areas may be established under the Act: wilderness reserves and ecological reserves.

Wilderness reserves may be created in areas where there is no or little human activity for the purpose of (s.4):

- providing for the continued existence of large areas to which people may come to hunt, fish, travel, and experience and appreciate a natural environment;
- allowing undisturbed interactions of living things and their environment;
- preserving large areas that may be necessary for the continued survival of a particular species, or

- protecting areas with primitive or extraordinary characteristics.

The Act prohibits numerous activities in wilderness reserves, among them: construction, cutting or logging trees, agriculture, mining, prospecting or claims staking, altering the course of water, the use of motorized vehicles, landing an aircraft, and carrying on a spraying program unless it is approved (s.24(3)).

Representative or "unique" areas of the Province may be set aside as an ecological reserve, the purposes of which include (s.5):

- (a) to provide for scientific research and educational purposes in aspects of the natural environment;
- (b) to preserve the habitat of an animal or plant species that is rare or endangered;
- (c) to provide standards against which the effects of development in other areas may be measured;
- (d) to provide an opportunity for study of the recovery of ecosystems from the effects of modification by human beings;
- (e) to preserve rare botanical, zoological, geological or geographic characteristics;
- (f) to preserve representatives of distinct ecosystems in the province; or
- (g) to preserve organisms in their natural habitat to ensure the preservation of their gene pools.

There are two other features of the Act which deserve mention. Section 22 provides the discretionary authority for the creation of "emergency" reserves where the Minister is of the opinion that an area is endangered. Secondly, the Act builds in the element of public involvement by requiring hearings to be held to consider submissions, representations and objections respecting the establishment of a reserve (s.21).

Land may be designated under several other statutes including the *Lands Act* (R.S. Nfld. 1991, c.36), the *Provincial Parks Act* (R.S. Nfld. 1991, 1990, c.P-32) and the *Urban and Rural Planning Act* (R.S. Nfld.1990, c. U-7), though the scope of each is fairly limited. The *Provincial Parks Act*, for example, provides for the designation of parks to be used for recreation and as "picnic sites", while the *Urban and Rural Planning Act* provides that an area of natural beauty or amenity may be designated as a protected area (s.58).

9. Prince Edward Island ("PEI")

Like most of its provincial counterparts, PEI does not have omnibus legislation setting out the rules or the reasons for the designation of land within the province. The legislative base instead consists of several different statutes, each dealing with a specific issue for a particular purpose and from a unique perspective.

PEI's version of ecological reserve legislation is the *Natural Areas Protection Act* (R.S.P.E.I. 1988, c.N-2) with its companion *Natural Areas Protection Regulation* (EC 54/89). As defined by s.1(b) of the Act:

"natural area" means a parcel of land designated as such under section 3 that

- (i) contains natural ecosystems or constitutes the habitat of rare, endangered or uncommon plant or animal species,
- (ii) contains unusual botanical, zoological, geological, morphological or paleontological features,
- (iii) exhibits exceptional and diversified scenery,
- (iv) provides haven for seasonal concentrations of birds or animals, or
- (v) provides opportunities for scientific and educational programs in aspects of the natural environment.

Activities prohibited in natural areas are listed in ss 3 and 9 of the regulation and include:

- cutting, destroying or removing trees, shrubs or other vegetation,
- planting or otherwise introducing non-native plant or animal species, and
- any other activity established in any restrictive covenant, easements, leases, licences or other documents or agreements.

The *Planning Act* (R.S.P.E.I. 1988, c. P-8) provides for the establishment of protected areas and habitat and includes public involvement and the protection of the unique environment of the Island among its objectives (s.2 (c) and (e)). This objective is pursued through regulations and policies concerned with land use zones establishing and regulating areas as conservation zones for the purpose of (ss 7 and 8(c)(iii):

- preserving objects of beauty,
- fossil remains,
- other things of aesthetic, education or scientific interest,
- preserving any unusual combination of elements of the natural environment having education, historic or scientific interest.

Protected areas and beaches as well as provincial parks may be established under the *Recreation Development Act* ((R.S.P.E.I. 1988, c.R-8) which is primarily concerned with the orderly development of recreational facilities and services.

10. The Territories

Notwithstanding their more limited jurisdiction, both Yukon and the Northwest Territories ("NWT") have enacted legislation concerning the designation of land for the purposes of protection and conservation in addition to the provision of recreational opportunities.

The *Territorial Parks Act* of the NWT (R.S.N.W.T. 1988, c.T-4) establishes five categories of parks, each primarily concerned with human use objectives (s.3). Restrictions upon development vary according to the category. No criteria for the selection of park land is given, though the Act does require public consultation prior to designation.

A slightly different approach is taken by Yukon's *Parks Act* (R.S.C. 1986, c. 126) which requires the establishment of a parks system for the purpose of protecting unique natural and historic features and to provide for comprehensive outdoor recreational opportunities (s.1). The Act sets out categories or zones ranging from primitive zones (no development) to multiple use and recreation zones (s.10). Development within parks is generally restricted to that consistent with the purpose of the park but may be permitted by Cabinet in any event, if a master plan for each park and a master plan for the proposed development has been prepared. Finally, public consultation is a prerequisite to the establishment of any park.

C. *New Zealand*

In New Zealand, the *Reserves Act* (S.N.Z. 1977, No.66) is the main statute providing for the conservation and protection of land. The *Reserves Act* defines a "reserve" or a "public reserve" to include most public land in New Zealand as well as private land set apart as a reserve in accordance with the Act (s.3).

The *Reserves Act* is an omnibus statute which authorizes land designations for a variety of purposes. Under the Act, the purposes of a reserve include both for land

and biodiversity protection. S.3 states the general purpose to be for the Minister of Conservation to provide for:

the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing -

- (i) Recreational use or potential, whether active or passive; or
 - (ii) Wildlife; or
 - (iii) Indigenous flora or fauna; or
 - (iv) Environmental and landscape amenity or interest; or
 - (v) Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features of value:
- (b) Ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its recognizable character:
- (c) Ensuring, as far as possible, the preservation of access for the public to and along the sea coast [and other water bodies] ... and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.

The Act enables the Minister, after public involvement, to classify land to be protected under the Act under one of the following classifications:

Recreation reserves for the purpose of providing areas for recreation and sporting activities and the physical welfare of the public, and for the protection of the natural environment and the beauty of the countryside, with the emphasis on the retention of open spaces and on outdoor recreational activities (s.17)

Historic Reserves for the purpose of protecting and preserving in perpetuity such places, objects and natural features, and such things thereon or therein contained as are of historic, archaeological, cultural, educational, and of other special interest (s.18)

Scenic reserves for the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest (s.19)

Nature reserves for the purpose of protecting and preserving in perpetuity indigenous flora or fauna or natural features that are of such rarity, scientific interest or importance, or so unique that their protection and preservation are in the public interest (s.20)

Scientific reserves for the purpose of protecting and preserving in perpetuity for scientific study, research, education, and the benefit of the country, ecological associations, plant or animal communities, types of soil, geomorphological phenomena, and like matters of special interest (s.21)

Government purpose reserves for the purpose of providing and retaining areas for such Government purposes as may be specified (s.22)

Local purpose reserves for the purpose of providing and retaining areas for such educational, community, social, or other local purposes as may be specified (s.23)

The Act enables the Minister to appoint an "administrating body" to hold and administer a reserve. The "administrating body" may be a local authority, a board, a society, a voluntary organization, or other person or corporation appointed to control or manage a reserve (ss 2(2) and 29). The Act contains a number of provisions governing the rights and limitations on the rights of any administrating body.

The *Reserves Act* mandates that conservation management plans be put into place for every reserve within 5 years of classification (ss 40 and 41). Moreover, the administrator of the reserve must manage the reserve in accordance with the conservation management plan (ss 40(4) and 41(11)). The plan must provide for and

ensure that the use, enjoyment, maintenance, protection and preservation, and to the extent allowed, development, of the reserve is in accordance with the purposes for which the reserve was classified and with the principles of the Act. The preparing of a conservation management plan must involve the public (s.41).

The *Reserves Act* contains specific authorizing and limiting powers of the Minister in respect of each classification. These powers deal with type of permissible access, use and dispositions.

Three other features are worthy of special note. First, the *Reserves Act* contains detailed transitional provisions in various places in the Act for bringing already designated areas under the Act. This is a vital feature to "umbrella" legislation.

Second, the Act provides for conservation easements to enable private landowners to dedicate interests in their land under the reserve system (ss 76 and 77). In our view, private conservancy must be conceived as an indispensable and integral element to a government designation program design. Often land falling under categories of classification (such as ecosystem protection) extend beyond available public land. Mechanisms are needed to facilitate landowners who want to donate or sell interest to more fully protect an area without fragmentation. Legislated conservation easements facilitate area protection and even provide incentive to landowners to donate or sell an interest in land.

Third, the Act addresses and sets out processes to deal with indigenous peoples' interest in and rights to land and associated ecosystems. This is a welcome feature in legislation for a country with outstanding and unsettled aboriginal issues.

ENDNOTES

1. **Personal communication October, 1995.**
2. **According to Department officials, the system plan is still at the consultation stage.**
3. **Only the *Provincial Parks Act* will be reviewed here, however it should be noted that conservation reserves can be created by Ministerial Order or regulation pursuant to the *Public Lands Act* while the *Wilderness Areas Act*, as the name implies, provides for the creation of wilderness areas.**
4. **For example, the maximum fine for violations of the Act or regulations was recently increased to \$5,000.**

V. DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

A *Discussion*

This part presents our conclusions regarding the need for new, consolidated designated lands legislation, a review of current disposition law and policy, and our recommendations.

The approach we have taken in making these recommendations is to present a vision or an overview intended to prompt further and careful discussion and consideration of the many issues involved. This we have done by identifying matters relevant to each issue and, in some instances, suggesting options for resolution. In every case our recommendations have been influenced by our review and analysis of existing designated lands legislation both here in Alberta and elsewhere, and are based, in part, on the conclusions described below.

B *Conclusions*

1. The effective and efficient designation and management of land for special or restricted purposes has been and continues to be hampered by a lack of comprehensive and cohesive legislation.

As indicated by the commentary and analysis given in Part II of this paper, the designation of land for special or restricted purposes is authorized by an array of legal instruments from statutes to ministerial orders. This has encouraged a "patch-work quilt" approach to conservation and protection that, while offering considerable flexibility, has lacked an overall vision, common purpose and clear rules for designation, administration and enforcement. In this sense, accomplishments to date must be attributed to something other than the legislative framework.

This situation cannot be cured through the implementation of the Special Places program alone; legislative reform must be undertaken to fully capitalize upon the potential of the program and to promote efficient administration through the articulation of clear and understandable rules.

2. *There is an opportunity and a need for leadership in the area of designated lands legislation and administration.*

The state of affairs described above is not unique to Alberta. The designated lands programs in most other provinces suffer from the same uncertainties and inadequacies. Alberta has an opportunity to provide much needed leadership by moving ahead with comprehensive legislative reform, consolidating and updating designated lands legislation.

3. *The nature and effect of land dispositions currently authorized by legislation is not clear.*

A public lands candidate for Special Places designation can be subject to any number of dispositions. Clarity is needed regarding the nature of the rights and of the limitations on the rights attendant to the dispositions in order to ascertain whether a given disposition is compatible with designation. Unfortunately, legislation, here meaning statutes and regulations, is not always clear as to key rights and limitations. Examples of unclarity are many, including, among others: the extent of a Minister's right to cancel or alter the disposition; the extent of any rights to renewal of the disposition; the issue of whether a disposition grants exclusive use of the entire area relating to the disposition or whether a Minister may permit or require other uses; whether any given disposition has preference over other uses or dispositions; and Crown residuary rights after a disposition term is over. Sometimes the unclarity results from legislation failing to explicitly or by necessary implication address these issues. Sometimes unclarity results from inconsistencies between authorizing

legislation and regulations. A further unclarity results from government policies relating to dispositions which might not be consistent with legislative directives.

4. *The lack of coordination between the authority for granting a disposition and the authority for land designation often leads to incompatible results.*

Legislation does not usually require the substantive involvement of the authority responsible for administering a protected area when a land disposition is granted. This lack of coordination can contribute to granting dispositions incompatible with the existing land designation, or granting dispositions lacking the terms and conditions which would effect compatibility. As well, lack of substantive involvement can cause confusion regarding enforcement and in respect of the purposes to be achieved through the creation and management of a protected area.

5. *Special Places aside, there are compelling reasons for comprehensive legislative review and reform including: (a) the need for clear definitions, (b) the need to articulate the purpose and intent of designated lands legislation, (c) the need to establish clear rules for designation, management and enforcement, and (d) the need to improve clarity.*

Our review of existing designated lands legislation made it abundantly clear that its utility is hampered by an absence of definition, poor internal organization, and a lack of common purpose or intent. These same sorts of criticisms have been made before by others and we can only add our advice to theirs by recommending review and revision.¹

C. Recommendations

The following recommendations are based upon two premises: (a) that existing legislation concerned with the designation of land will be consolidated and (b) the resulting consolidation would also be revised to address current inadequacies. That said, our recommendations are presented in the context of an outline identifying the major subject matters or issues that ought to be addressed.

1. Purpose

Discussion

Descriptive components of legislation setting out its general intent or underlying principles are typically referred to as "purpose" or "purposes" sections. Purpose sections can be found in either the introductory paragraphs or preamble of legislation (unnumbered provisions) or within the body (numbered provisions) and are a characteristic feature of modern legislative drafting.

Purpose sections are intended to assist in the interpretation and implementation of legislation by providing a context within which to understand more substantive provisions. In that sense, carefully crafted purpose provisions "fill in the gaps" resulting from the (necessarily) broad and general language of statutes and, less commonly, regulations.

The clarity and internal consistency of legislation is greatly enhanced when the principles articulated in purpose provisions are carried forward and repeated in more detailed or substantive sections.

Recommendations

We recommend that:

(a) Provisions clearly articulating the purpose or intent of legislation be included in consolidated designated legislation. Where there are multiple purposes listed, every effort should be made to avoid inconsistency or conflict between them and, if possible, to indicate the relative priority of each.

(b) Subsequent substantive provisions be consistent with and give expression to the principles and intent established by purpose sections. One way of accomplishing this would be to link all decision making to criteria that is consistent with or furthers the principles established by purpose provisions.

(c) With respect to the designation of land, the purpose of designation should be clearly set out so that the most protected designation would be linked to the concepts of perpetuity, preservation and protection. In this regard, it might be useful to structure the legislation so that a unique purpose section precedes provisions dealing with each type of designation. This is the approach taken by the *Environmental Protection and Enhancement Act*, for example, which sets out a discrete purpose section for the environmental impact assessment process established under the Act. Another model to consider is Newfoundland's *Ecological Reserves Act* which distinguishes between wilderness and ecological reserves with respect to a number of factors, including purpose and designation criteria.

2. Definitions

Discussion

As presently drafted, designated lands legislation suffers from a lack of clearly articulated definitions. This deficiency has led to considerable confusion regarding interpretation and implementation.

Recommendations

We recommend that:

(a) Carefully crafted definitions be included within new consolidated legislation. In particular, and by way of example, definitions should be provided for the terms "wilderness", "park", "ecological area" and "ecosystem". Definitions of some key terms exist in the legislation of other jurisdictions and ought to be of some assistance in devising definitions for new consolidated legislation. For example, definitions can be found in existing legislation for the following terms:

- "ecological reserve" (Saskatchewan, *Ecological Reserves Act*, s.2),
- "ecosystem" (Manitoba, *The Ecological Reserves Act*, s.1),
- "provincial parks" (New Brunswick, *Ecological Reserves Act*, s.1(a)), and
- "natural area" (Prince Edward Island, *Natural Areas Protection Act*, s.1(b)).

3. Designation Process

Discussion

Clear rules regarding the process for the initial designation of land and thereafter for changing boundaries and use or repealing designations will go a long way towards establishing an efficient and effective land designation system. These rules should be set out in the new consolidated Act to promote consistency and predictability.

Individual designations and the management rules applicable to each may be brought about through a variety of legal vehicles including statutes, regulations and ministerial orders. Careful consideration should be given to each of these options and a decision made on the basis of their relative merits.

Statutes generally list individual designations (and the rules pertaining to each) in schedules to the act. Schedules typically follow the last numbered provision of legislation and are thus appended to it. To avoid confusion, the status of schedules should be made clear: if they are to form part of the legislation, this should be clearly stated. The consequence of course is that changes to a schedule can only be made through the same sort of legislative scrutiny and procedure that must be followed to achieve the amendment of a statute - that is, through discussion, debate, public notice and ultimately a vote of the legislature.

The amendment process for regulations depends, in part, upon the type; those made by a minister and those made by the Cabinet. Generally speaking, the former deal with technical or administrative matters while the latter address important policy issues. Regulations issued at a ministerial level tend to be easier and faster to amend than those issued by Cabinet.

The most flexible instrument is the ministerial order. That said, the very flexibility and relative informality of the ministerial order reduces public notice and political debate correspondingly making them perhaps the most arbitrary and "closed" approach to rule making.

There are ways of capitalizing on the comparative flexibility and efficiency of approaching designation and management through regulations or ministerial order while building in safeguards recognizing the public interest. For example, the Act might authorize the use of regulations or ministerial orders but only after public notice and a reasonable time for review and commentary. This requirement should apply whether the issue is initial designation, management plans or altering boundaries.

Recommendation

We recommend that:

- (a) Rules regarding the process for the designation, management or boundary alteration of land be clearly set out in new consolidated legislation.
- (b) If the desired option is to proceed by way of regulation or ministerial order, that public notice, review and commentary be a mandatory precondition.

4. Authority For Designation

Discussion

Confusion regarding authority to designate and thereafter administer designated lands has been one undesirable consequence of the present state of legislative affairs. This weakness can be addressed through consolidated legislation clearly identifying who is in charge - not only for designation but for management and enforcement.

Recommendation

We recommend that:

(a) New consolidated legislation clearly establish the authority for designation, management and enforcement. This is achieved, for example, by s.3.1 of Manitoba's *Ecological Reserves Act* which provides:

3.1 The minister shall designate a Director of Ecological Reserves who shall act under the direction of the minister and be responsible for the control and management of reserves and the ecological reserve system.

5. *Prohibited and Permitted Uses*

Discussion

There is a need for certainty respecting the outcome of a particular designation, particularly as regards prohibited and permitted uses. That said, there is also a recognized need for a certain amount of flexibility to reflect the peculiarities of individual sites. Combining a variety of designations within a site is one way of accommodating both objectives.

Recommendations

We recommend that:

(a) **Prohibited and permitted uses for each type of designation should be established and clearly articulated.** Numerous examples of statutory and regulatory provisions prohibiting various activities upon certain categories of designated land exist in the current legislation of other Canadian provinces. Section 6 of New Brunswick's *Ecological Reserves Act* and s.7 of Manitoba's (still unproclaimed) *Provincial Parks Act* are representative of models to draw upon.

(b) **Uses should be consistent and fixed for each type of designation and should reflect the particular purpose of that designation.**

(c) **Zoning within a particular site would allow for combinations of designations, thus achieving a certain degree of flexibility.** Creating "pockets" of particular use within a larger area of land designated for another, consistent purpose through the use of "zones" is a feature found in the legislation of several jurisdictions, including Ontario (*The Provincial Parks Act*) and Yukon (*Parks Act*).

6. Dispositions

Discussion

Our recommendations relate to our findings on the unclarity in legislation regarding the nature and effect of dispositions and on lack of required involvement of the authority responsible for administering a protected area (*see Part V, B, 4 and 5*).

Recommendations

We recommend that:

- (a) A review of legislation authorizing dispositions be undertaken and legislation amended and updated to clarify the rights, limitations and effects of dispositions.
- (b) Policy in administering dispositions be clarified and made responsive to and consistent with legislation.
- (c) New legislation to effect Special Places mandate substantive involvement of the authority administering a protected area in the granting and administering of dispositions relating to the protected area.

7. Management Plans

Discussion

Management plans establishing the way in which a designated site is to be developed and the uses that it may thereafter be put to are a useful tool and should be considered for new consolidated legislation. While legislation often refers to management plans, development is often left to the discretion of the responsible authority and the status of such plans is far from clear. There is room for considerable improvement in the effective employment of management plans in the area of land designation.

Recommendation

We recommend that:

- (a) The development and implementation of management plans be a mandatory requirement for designated sites.
- (b) New consolidated legislation require adherence to the management plans.
- (c) Enforcement mechanisms be put in place by new consolidated legislation to ensure compliance with management plans.

8. *Public Involvement*

Discussion

The Government has committed to involving the public in the Special Places program. This commitment ensures that the well known benefits of public involvement will be put to work to make Alberta's program an effective one. Public involvement: (a) increases the information available to decision makers, (b) encourages innovation and creative approaches, (c) is one way of testing information thereby improving the quality of resulting decisions and (d) provides direction and content to decision making processes. Provision for public participation in the designation and management of land has been built into the legislation of a number of provinces including Manitoba and Newfoundland and into legislation enacted by both of the Territories.

Recommendation

We recommend that:

- (a) New consolidated legislation require public notice of and participation in all decision making processes leading up to site designation and the development of management plans with respect thereto.
- (b) Processes for public participation be clearly set out in the Act.
- (c) Support for public participation through the provision of funding and access to information be provided for in the Act.

(d) The public be allowed to be effective partners in enforcing compliance with management plans through reporting programs, private prosecutions and other court action to obtain injunctive orders.

9. Enforcement

Discussion

Even the most carefully crafted law can become ineffective if there is no meaningful way to address non-compliance. Alberta's new *Environmental Protection and Enhancement Act* should serve as a model for enforcement mechanisms. Examples of enforcement provisions can also be found in the designated lands legislation of Ontario, British Columbia, Manitoba and Ontario.

Recommendations

We recommend that:

(a) New consolidated legislation incorporate relevant enforcement provisions of the *Environmental Protection and Enhancement Act*.

10. Transitional Provisions

Discussion

Careful thought will be required to promote a smooth transition from the old regime of land designation to the new so that all worth keeping is not lost. This might be done by "rolling over" or continuing existing designations and management plans under the new consolidated legislation.

Recommendations

We recommend that:

- (a) New consolidated legislation include substantive provisions dealing with transitional issues like, for example, the status of management plans developed for existing protected areas.**

ENDNOTES

1. See, for example, the recommendations of the Advisory Committee on Wilderness Areas and Ecological Reserves as listed in their *Ninth Annual Report* released in 1992.

ENDNOTES

Endnoted

See, for example, the recommendations of the Advisory Committee on
Wilderness Areas and Ecological Reserves as listed in their Annual Report
issued in 1982.
This finding and the subsequent action regarding the wilderness area
designated with management to ensure the wilderness of the area is
left in its natural state.

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